TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 91

THE UNITED STATES, APPELLANT

vs.

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY

APPEAL FROM THE COURT OF CLAIMS

FILED JUNE 11, 1926

(30405)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 91

THE UNITED STATES, APPELLANT

vs.

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY

APPEAL FROM THE COURT OF CLAIMS

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1 In Court of Claims

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY
v.
THE UNITED STATES
No. C–58

I. *Petition*

Filed March 8, 1923

To the honorable the chief justice and judges of the Court of Claims:

Your petitioner, St. Louis, San Francisco & Texas Railway Company, respectfully represents as follows:

I

Your petitioner, a corporation, owns and operates a system of railroad in and through the State of Texas, and is a common carrier for hire of freight and passengers, its tariff charges for such services being duly published and filed with the Interstate Commerce Commission in accordance with law.

II

2 In August, 1917, your petitioner and its connecting lines transported, on government bill of lading, from Fort Sill, Oklahoma, to Camp Bowie, Texas, twenty-seven carloads of "military impedimenta," the property of the United States, including 2 cars trucks, 11 cars escort wagons, 10 cars horses and mules, 1 car forage, and 3 cars of miscellaneous troop property. For the said service of transportation your petitioner, as delivering carrier, presented its bill No. 2721 for $2,452.29, based upon lawful freight tariff rates published in tariffs filed with the Interstate Commerce Commission in accordance with law.

III

The Auditor for the War Department, in his settlement No. 33886, September 16, 1918, disallowed your petitioner's said bill in full. The disallowance was based upon the claimed applicability of certain special baggage car tariffs, published by your petitioner and other carriers, wherein the right of certain shippers and travelers to the free transportation of one carload of baggage or other specified property in connection with each twenty-five passenger fares is authorized and allowed. The auditor's action was on the authority of the ruling of the Comptroller of the Treasury in Appeal No. 27942, L. & N. R. Co., June 18, 1918.

IV

Your petitioner avers that the property shipped on the said bill of lading, as above stated, was not and could not lawfully have been carried in baggage cars, and was in no sense baggage within the common and known meaning of that term, or as used in your petitioner's published tariffs or those of its connecting carriers;
3 that the action of the accounting officers of the United States Government in disallowing your petitioner's bill rendered for such transportation service, based upon your petitioner's lawfully published tariffs, and in refusing payment to your petitioner, was erroneous and unlawful, and that there is now justly due and owing your petitioner from the United States, on account of the transportation service hereinbefore mentioned, the sum of $2,452.29.

V

Your petitioner further avers that the said disallowance and the attempted application of special baggage car tariffs to the transportation herein referred to, were erroneous and improper by reason of the provisions of a certain agreement entered into between your petitioner and other railroad carriers and the United States Government for the transportation of military traffic, to wit, an agreement entitled "Interterritorial military arrangement," dated December 28, 1916, effective January 1, 1917. The said agreement provided in substance that for the transportation of officers and enlisted men and others connected with the United States Army and United States Navy and United States Marine Corps, the Government would be charged lawful commercial fares as on file with the Interstate Commerce Commission, from starting point to destination at time of movement, less lawful land-grant deductions properly established, less five per cent (5%) additional. The said agreement provided for the transportation of one hundred and fifty (150) pounds of personal effects, properly checkable as baggage, without charge for each person, and also contained a provision that, "Company
4 battalion, regimental or Government property is not included in the above," the reference being to the hereinbefore mentioned provision relative to checkable baggage.

The said interterritorial military arrangement was an agreement proposed by and executed by the authorized representatives of the carriers throughout the United States, and accepted and executed on behalf of the United States by the Quartermaster General of the Army, United States War Department, the Chief of the Bureau of Navigation, United States Navy Department, and the Quartermaster, United States Marine Corps. Your petitioner and all connecting carriers participating in the movement herein referred to were parties to the said agreement.

Wherefore, the premises considered, your petitioner prays judgment against the United States in the sum of two thousand four hundred fifty-two dollars and twenty-nine cents ($2,452.29).

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY,
By J. R. KOONTZ.

STATE OF MISSOURI, *City of St. Louis.*

Before me, A. J. Filipiak, a notary public in and for the State and county aforesaid, personally appeared J. R. Koontz, known to me to be the vice-president of St. Louis, San Francisco & Texas Railway Company, a corporation, and made oath before me that the allegations of the foregoing petition by him signed are true to the best of his knowledge, information, and belief.

[SEAL.]

A. J. FILIPIAK,
Notary Public.

BRITTON & GRAY,
Attorneys for Petitioner.

5 II. *General traverse*

Filed May 8, 1923

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by rule 34.

III. *Submission of case*

On March 3, 1924, this case was submitted on merits, on stipulation of parties, without argument, by Messrs. Britton & Gray, for plaintiff, and by Mr. Geo. H. Foster, for defendant.

6 IV. *Findings of fact and conclusion of law, with memorandum by the court*

Entered March 17, 1924

This case having been submitted to the court upon stipulation signed by Britton & Gray, attorneys on behalf of the plaintiff and by Robert H. Lovett, Assistant Attorney General, on behalf of the United States, the court, upon the record and said stipulation, makes the following

FINDINGS OF FACT

I

The plaintiff, a corporation, is a common carrier by railroad of freight and passengers.

II

At the time of the transportation of the troops and military impedimenta hereinafter mentioned, there were in force on the lines of the plaintiff company and other railroad carriers with which it connected, being the carriers who furnished the transportation hereinafter mentioned, certain special baggage car tariffs covering the territory through which the said troops and military im-
7 pedimenta were moved, which stated in substance and effect, the terms and conditions upon which associated travelers traveling on one ticket might become entitled to a baggage car free for the transportation of certain of their effects, on the basis generally of one car free to each twenty-five passengers.

III

Prior to January 1, 1917, the plaintiff, with other railroad carriers throughout the United States, entered into an agreement with the United States Government on the subject of fares and allowances in connection with the transportation of military traffic, entitled "Interterritorial military arrangement 1," dated December 28, 1916, signed on behalf of the carriers by their duly authorized agents and on behalf of the United States by the Quartermaster General of the Army. The said agreement was in effect beginning January 1, 1917, and throughout the year 1917. It contained among other provisions the following:

"III. Traffic Covered by This Agreement

"The net fares, allowances, and routes in connection therewith, authorized hereunder, are applicable exclusively for the transportation of officers and enlisted men and others connected with the United States Army, United States Navy, and United States Marine Corps, for whom the United States is lawfully entitled thereto, and
8 when traveling on transportation requests of the issues of the United States Army, United States Navy, and United States Marine Corps, and at United States Government expense only.

"IV. Net Fares and Allowances

"(1)(a) The fares applicable under this arrangement will be the lawful commercial fares as on file with the Interstate Commerce Commission from starting point to destination at time of movement (see exception, Section V), less lawful land-grant deductions properly established, less five per cent (5%), the five per cent allowances not to exceed the maximum allowances or exceptions as specified in Section VI. Government fares so established will apply to all military traffic as described in Section III, including special train and special car movements as well as individual and party movements (see Section XL).

"(b) Proportions will not be used in any case in the construction of fares.

* * * * * * *

"XV. BAGGAGE

(1) One hundred and fifty (150) pounds of personal effects, properly checkable as baggage under the tariff of the initial carrier, will be transported without charge for each person. Personal baggage in excess of the free allowance stated, when provision for the transportation of the excess baggage is specifically made in the United States Army, Navy, or Marine Corps transportation requests and is paid for by the United States Government, will be charged for at the regular excess baggage rate, based upon the net individual fare. When provision is not made in the transportation request for the transportation of excess baggage, collection will be made from the traveler at the regular commercial rate for weight in excess of the free allowance stated. Excess baggage charges will not be subject to allowances applicable in connection with the fares for tickets under this arrangement. Baggage regulations in other respects than above will be in accordance with the tariff of the initial carrier checking the baggage in each case.

"(2) Company, battalion, regimental, or Government property is not included in the above."

IV

In August, 1917, the plaintiff and its connections carried on Government bill of lading from Fort Sill, Oklahoma, to Camp Bowie, Texas, 27 carloads of "military impedimenta," the property
9 of the United States, including two cars trucks, eleven cars escort wagons, ten cars horses and mules, one car forage, and three cars *in*scellaneous troop property.

V

For the said service the plaintiff presented its bill 2721 for $2,452.29 on the basis of freight rates. The bill was disallowed in its entirety by the Auditor for the War Department, September 16, 1918, on the ground that the Government was entitled to the use of one baggage car free with each twenty-five men in the accompanying movement of troops, upon authority of the special baggage car tariffs referred to in Paragraph II, supra.

VI

Subsequently the plaintiff submitted to the Auditor for the War Department supplemental bill for the same service, claiming $2,234.97 on the basis of freight rates. This bill was dismissed because of the previous settlement.

VII

The amount to which the plaintiff should have been entitled for the said service on the basis of freight rates less land-grant deductions is $2,234.97.

VIII

No written protest was filed at the time the Auditor for the War Department made his original settlement disallowing the plaintiff's bill, and no appeal was taken to the Comptroller of the Treasury.

CONCLUSION OF LAW

Upon the foregoing findings of fact the court decides as a conclusion of law that the plaintiff is entitled to recover the sum of $2,234.97. It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of two thousand two hundred and thirty-four dollars and ninety-seven cents. ($2,234.97.)

MEMORANDUM

See cases of Schaff, receiver, No. A–241, decided March 3, 1924, and Wabash Railway Co., No. C–74, decided March 3, 1924.

V. *Judgment*

At a Court of Claims held in the city of Washington on the seventeenth day of March, A. D. 1924, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises find in favor of the plaintiff, and do order, adjudge, and decree that the plaintiff, as aforesaid, shall have and recover of and from the United States the sum of two thousand two hundred and thirty-four dollars and ninety-seven cents ($2,234.97). By the court.

VI. *Proceedings after entry of judgment*

On April 1, 1924, the defendant filed a motion for a new trial.

Subsequently, towit, on April 7, 1924, the court filed an order overruling defendant's motion for a new trial.

VII. *Petition for appeal*

Filed May 22, 1924

From the judgment rendered in the above-entitled cause on the 17th day of March, 1924, in favor of the claimant, the defendants, by their Attorney General, on the 22nd day of May, 1924, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT H. LOVETT,
Assistant Attorney General.

VIII. *Order allowing appeal*

On this 2nd day of June, 1924, it is ordered by the court that the defendant's application for appeal be and the same is allowed. By the court.

12 Court of Claims of the United States

[Title omitted.]

I, F. C. Kleinschmidt, assistant clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law, with a memorandum by the court; of the judgment of the court; of the proceedings after entry of judgment; of the defendant's application for appeal; of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this sixth day of June, A. D. 1924.

[SEAL.]

F. C. KLEINSCHMIDT,
Assistant Clerk, Court of Claims.

[Indorsed on cover: File No. 30,405. Court of Claims, Term No. 91. The United States, appellant, vs. St. Louis, San Francisco & Texas Railway Company. Filed June 11th, 1924. File No. 30,405.]

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 92

THE UNITED STATES, APPELLANT

vs.

WABASH RAILWAY COMPANY

APPEAL FROM THE COURT OF CLAIMS

FILED JUNE 11, 1926

(30406)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 92

THE UNITED STATES, APPELLANT

vs.

WABASH RAILWAY COMPANY

APPEAL FROM THE COURT OF CLAIMS

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1 In Court of Claims

No. C–74

WABASH RAILWAY COMPANY

v.

THE UNITED STATES

I. *Petition*

Filed Mch. 17, 1923

To the Honorables, the Chief Justice and Judges of the Court of Claims:

Petitioner respectfully represents unto Your Honors the following facts:

I

Petitioner is a corporation organized and existing under the laws of the State of Indiana, and has always been loyal to the United States and has never voluntarily aided or abetted its enemies.

For many years petitioner has operated a line of railways in the State of Indiana and other States, doing business as a common carrier of passengers and freight for hire and reward under tariffs issued by itself and its connections duly published and filed with the Interstate Commerce Commission according to law.

II

That the United States Government, in paying for railroad transportation, is entitled to the lowest rates open to the public
2 unless by prior arrangement lower rates are agreed upon, and that irrespective of the provisions of the military agreements hereinafter referred to, to which the Government was a party, the joining of an individual rate with a party fare rate, or any combination of such rates, is a method of fixing rates for a through passenger service which the Interstate Commerce Commission has declared to be illegal and which is forbidden to petitioner and all other railroad carriers, and which is not employed in the determination of rates to the public for a through service.

III

That at various times prior to the dates of the transportation hereinafter referred to, your petitioner, in common with other railroad carriers of the United States, entered into agreements with the Government of the United States on the subject of fares and allowances

for the transportation of military traffic, the said agreements being variously entitled "Interterritorial military arrangements," "Interterritorial military agreements," "Western military arrangement," etc. The said agreements were executed on behalf of the carriers by the duly authorized agents of the Southwestern, Transcontinental, and Western Passenger Associations, the Central Passenger Association, the New England Passenger Association, the Southeastern Passenger Association, and the Trunk Line Association, and on behalf of the United States by the Quartermaster General of the Army, United States War Department, the Chief of the Bureau of Navigation, United States Navy Department and the quartermaster, United States Marine Corps. Your petitioner refers to agreement between the War Department and the western carriers dated November 30, 1914, and agreement between the Navy Department and Marine Corps and the western carriers, dated June
3 18, 1915; also to agreement referred to as western military arrangement dated April 1, 1916, effective July 1, 1916, and agreement referred to as interterritorial military arrangement, dated December 28, 1916, effective January 1, 1917. All of said agreements, which were in effect during the periods hereinafter referred to and at the dates of the transportation herein described and referred to, contained certain provisions relative to the construction of net fares and allowances and the use of party fares. One of the said agreements, designated western military arrangement, dated April 1, 1916, effective July 1, 1916, contained the following provisions:

"(9) Party fares (where authorized) apply for parties traveling together on one party ticket.

"(a) Party fares may be used as factors in constructing through net fares to and from central trunk line, southeastern, and New England territories, in the understanding that the basing points shall be Chicago, St. Louis, Memphis, Vicksburg and New Orleans only. Neither two or more party fares, nor a party fare and an individual fare, east or west of the gateways named, may be combined in establishing a basing fare to or from the basing point. Party fares used to and from basing points must be authorized as one through party fare to or from such basing points, as the case may be. A party fare or an individual fare, published as one through fare to or from the basing points named, may, however, be combined with authorized individual fares east or west of such points in making through net fares between the eastern and western territories described except that where through fares of like class are published they shall be used in all cases in establishing through net fares. All fares used in establishing net fares must be lawfully on file with the Interstate Commerce Commission.

4 "(b) In the construction of net military fares having origin and destination within the territory west of and including Chicago, St. Louis, Memphis, Vicksburg, and New Orleans, party

fares to or from St. Louis and Kansas City only may be combined with party fares to and from those gateways only, and party fares to and from St. Louis to and from those gateways only. Two or more party fares, nor a party fare and an individual fare, on either side of St. Louis and Kansas City, may not be combined in establishing the basing fare to or from St. Louis or Kansas City.

"(c) Net fares established in combinations made under sections (a) and (b) apply via usual one-way ticketing routes carrying short-line fares, or via routes specifically equalizing net fares so made, but shall be restricted to usually traveled routes for military traffic from starting point to destination.

"(d) Where party fares are used in the territories and upon the bases outlined in sections (a) and (b) herein, the same shall be net cashed in the usual way via rate-making gateway only, but where such fares are used for any part of the distance in the territory west of Chicago, St. Louis, Memphis, Vicksburg and New Orleans, under sections (a) and (b) herein, the five per cent allowance to the Government shall not apply to any part of the through fare or proportion, either party or individual fare factor, so far as western carriers are concerned.

"(e) The intent of this agreement is that where through fares are published, no combinations of fares whatsoever are to be made, except as specified in sections (a) and (b) herein."

Another of the said agreements, designed interterritorial military arrangements, dated December 28, 1916, effective January 1, 1917, contained the following provisions:

"For military traffic moving from territory east of Chicago, St. Louis, Memphis, Vicksburg and New Orleans, to territory west thereof, or vice versa, authorized party fares to and from the gateways named may be used in the construction of through net fares, in the understanding that the basing points will be Chicago, St. Louis, Memphis, Vicksburg and New Orleans only.

"Neither two or more party fares, nor a party fare and an individual fare east or west of the gateways named, may be combined in establishing a basing fare to or from the basing point. Any party fare used to or from the basing points named must be authorized as one through party fare to or from such basing points, as the case may be. A party fare or an individual fare published as one through fare to or from the basing points named may, however, be combined with authorized individual fares east or west of such points in making through net fares between the eastern and western territories described, except that where through fares of like class are published, they shall be used in all cases in establishing through net fares; all fares used in establishing net fares must be lawfully on file with the Interstate Commerce Commission."

Petitioner shows that by the foregoing provisions the Government agreed to abide the commercial rule except for such concessions as

were therein made to the Government, and that, as the Government was not entitled as a matter of right to the use of party fares in combination with individual fares, the said agreements were binding upon the Government.

IV

That at various times during the year 1916, subsequent to June 30, 1916, your petitioner, acting upon transportation requests issued by the duly authorized agents and officers of the United States,
6 transported large numbers of persons for the United States Government, on your petitioner's own lines and in connection with your petitioner's connecting carriers. In rendering bills for such transportation your petitioner computed the charges thereof on the basis of the lawfully published tariff rates, as modified or otherwise affected by the terms and provisions of the above-mentioned military agreements. Notwithstanding the said tariff rates and provisions, and the terms of the said military agreements, your petitioner avers that the Government accounting and disbursing officers have constructed through fares by every possible combination that would produce a minimum fare, in particular using two or more party fares, or party fares and individual fares, or other combinations thereof over any intermediate points, other than those specified in the agreement, and by unusual and impracticable routes, all of said combinations being contrary to and expressly excluded by the provisions of the said military agreements relative to the use of party fares.

V

At the instance and request of duly authorized officers of the United States Army, petitioner furnished transportation to the United States Army as follows:

Date	T/reqn. W. Q.	From—	To—	No. of passgrs.
1916				
July 6	34911	Springfield, Ill	Brownsville, Texas	1, 201
July 3	34922	Springfield, Ill	San Antonia, Texas	1, 126

For said transportation petitioner, under the tariffs then in effect and under said military agreements, was entitled to be paid
7 the net cash per capita rate of $25.30 on the movement from Springfield to Brownsville and the net cash per capita rate of $18.37 on the movement from Springfield to San Antonio, and for such sums rendered its bill S–394 to the disbursing quartermaster of the United States Army, who paid the same as rendered by voucher No. 238 of Major Robert Field for May, 1917. Subse-

quently, upon an examination of the disbursing officer's account, the aforesaid payment was suspended by the Auditor for the War Department on the ground that notwithstanding said military agreements and the general prohibition against the construction of fares for through service by combinations of intermediate fares involving the use of party fares, the Government was entitled to make through rates by such combinations and over points not specified in said agreements and he caused demand to be made upon petitioner for the refund of the sum of $7,663.56, the difference between the amounts paid and the amounts due on the basis proposed by the Auditor. Petitioner refused to make said refund and thereupon the disbursing quartermaster at Washington arbitrarily deducted said sum of $7,663.56 from petitioner's subsequent bill No. S–1064 for passenger service rendered in August, 1917, and said bill S–1064, as so reduced, was paid by Captain R. G. Wood's voucher No. 5500–T of March, 1918. When notified by the zone finance office at Washington that said account No. S–1064 had been passed for payment in the reduced amount, petitioner, by letter dated January 8, 1918, notified said zone finance office that the quartermaster's warrant in settlement of said bill for the reduced amount, when received, would be accepted under protest subject to further settlement and at the same time petitioner rendered to the zone finance office its supplemental bill (S–394) for the amount of said deduction.

8

The zone finance office on February 12, 1918, returned said supplemental bill with the statement that the deduction from account S–1064 had been made in accordance with instructions by the Auditor for the War Department and that it would be necessary for any further correspondence to be had with the auditor. Thereupon, on April 9, 1918, petitioner forwarded said supplemental bill to the auditor with a statement of the previous correspondence with the zone finance office. The Auditor for the War Department, by his certificate No. 34611, dated October 9, 1918, disallowed said supplemental bill in full, "for the following named reasons; viz:

"Under the dec. of the Compt. of the Treas. dated May 10, 1918, if a through fare can be established by a combination of individual and party fares over junction points not authorized by the interterritorial military arrangements which is lower than any combination that can be established over junction and under terms authorized by said agreement, the government is entitled to the lower fare providing the benefit of the 5% allowance is waived."

The reasons assigned for the original deduction and for the subsequent disallowance of petitioner's supplemental bill were violative both of the lawful method of constructing through fares and of the terms of said military agreements.

Premises considered, petitioner prays judgment against the United States in the sum of s ven thousand six hundred sixty-three

dollars and fifty-six cents, no part of same having been paid and petitioner's right thereto not having been transferred or assigned.

WABASH RAILWAY COMPANY,
By F. CARTER POPE,
Its Attorney in Fact.

WILLIAM E. LINDEN, *Of Counsel.*

9 [Sworn to by F. Carter Pope; jurat omitted in printing.]

10 II. *General traverse*

(Filed May 12, 1923)

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

ROBERT H. LOVETT,
Assistant Attorney General.
GEO. H. FOSTER,
Special Assistant to the Attorney General.

III. *Argument and submission*

On February 7, 1924, this case was argued and submitted on merits by Mr. F. Carter Pope, for the plaintiff, and by Mr. J. H. Sheppard, for the defendant.

11 IV. *Findings of fact, conclusion of law, and opinion of the court by Campbell, Ch. J.*

(Entered Mch. 3, 1924)

This case having been heard by the Court of Claims, the court upon the evidence makes the following

FINDINGS OF FACT

I

The plaintiff is a corporation duly incorporated under the laws of the State of Indiana, and during the times of the different transactions hereinafter set forth in these findings of fact operated, and still operates, a line of railways in the State of Indiana and other States, doing a business as a common carrier of passengers and freight for hire and reward under tariffs issued by it and its connecting carriers with its concurrence, and duly published and filed with the Interstate Commerce Commission as required by law.

II

Prior to the dates of the transportation which constitutes the subject of this suit the plaintiff and other railroads of the United States entered into agreements with the Government concerning fares and allowances for the transportation of United States troops and property. The said agreements were designated as interterritorial military arrangements, western military arrangements, etc. The said agreements were executed on behalf of the carriers by the duly authorized agents of the Southwestern, the Transcontinental, the Western, the Central, the New England, and the Southeastern Passenger Associations, and the Trunk Line Association, and on behalf of the United States by the Quartermaster General of the Army, the Chief of the Bureau of Navigation of the Navy, and the quartermaster of the Marine Corps. The said military agreements were in full force and effect as late as May 20, 1920, and their provisions have been observed by the carriers generally. Under the terms of said agreements the Government has paid for transportation at rates substantially five per centum less than it would otherwise have paid.

III

One of the said agreements, designated western military arrangement, dated April 1, 1916, effective July 1, 1916, contained the following provisions:

"(9) Party fares (where authorized) apply for parties traveling together on one party ticket.

"(a) Party fares may be used as factors in constructing through net fares to and from central, trunk line, southeastern, and New England territories, in the understanding that the basing
12 points shall be Chicago, St. Louis, Memphis, Vicksburg, and New Orleans only. Neither two or more party fares, nor a party fare and an individual fare, east or west of the gateways named may be combined in establishing a basing fare to or from the basing point. Party fares used to and from basing points must be authorized as one through party fare to or from such basing points, as the case may be. A party fare or an individual fare, published as one through fare to or from the basing points named, may, however, be combined with authorized individual fares east or west of such points in making through net fares between the eastern and western territories described except that where through fares of like class are published they shall be used in all cases in establishing through net fares. All fares used in establishing net fares must be lawfully on file with the Interstate Commerce Commission.

"(b) In the construction of net military fares having origin and destination within the territory west of and including Chicago, St. Louis, Memphis, Vicksburg, and New Orleans, party fares to or from St. Louis and Kansas City only may be combined with party fares to and from those gateways only, and party fares to and from

St. Louis to and from those gateways only. Two or more party fares, nor a party fare and an individual fare, on either side of St. Louis and Kansas City, may not be combined in establishing the basing fare to or from St. Louis or Kansas City.

"(c) Net fares established in combinations made under sections (a) and (b) apply via usual one-way ticketing routes carrying short-line fares, or via routes specifically equalizing net fares so made, but shall be restricted to usually traveled routes for military traffic from starting point to destination.

"(d) Where party fares are used in the territories and upon the bases outlined in sections (a) and (b) herein, the same shall be accepted in the usual way via rate-making gateway only, but where such fares are used for any part of the distance in the territory west of Chicago, St. Louis, Memphis, Vicksburg and New Orleans, under sections (a) and (b) herein, the five per cent allowance to the Government shall not apply to any part of the through fare or proportion, either party or individual fare factor, so far as western carriers are concerned.

"(e) The intent of this agreement is that where through fares are published, no combinations of fares whatsoever are to be made, except as specified in sections (a) and (b) herein."

IV

That at various times during the year 1916, subsequent to June 30, 1916, plaintiff, acting upon transportation requests issued by the duly authorized agents and officers of the United States, transported large numbers of persons for the United States Government on plaintiff's own lines and in connection with plaintiff's connecting carriers. In rendering bills for such transportation plaintiff computed the charges thereof on the basis of the lawfully published tariff rates as modified or otherwise affected by the terms and provisions of the above-mentioned military agreements. Notwithstanding the said tariff rates and provisions, and the terms of the said military agreements, the Government accounting officers constructed through fares by using two or more party fares, or party fares and individual fares, or other combinations thereof over intermediate points, other than those specified in the agreement.

13

V

At the instance and request of duly authorized officers of the United States Army plaintiff furnished transportation to the United States Army as follows:

Date	T/rqn. W. Q.	From—	To—	No. of passgrs.
1916				
July 6	34911	Springfield, Ill	Brownsville, Tex	1,201
July 3	34922	Springfield, Ill	San Antonio, Tex	1,126

For said transportation plaintiff, under the tariffs then in effect and under said military agreements, was entitled to be paid the net cash per capita rate of $25.20 on the movement from Springfield to Brownsville and the net cash per capital rate of $18.37 on the movement from Springfield to San Antonio, and for such sums rendered its bill S–394 to the disbursing quartermaster of the United States Army, who paid the same as rendered by voucher No. 238 of Major Robert Field for May, 1917. Subsequently upon an examination of the disbursing officer's account the aforesaid payment was suspended by the Auditor for the War Department on the ground that notwithstanding said military agreements against the construction of fares for through service by combinations of intermediate fares involving the use of party fares with individual fares, the Government was entitled to make through rates by such combinations and over points not specified in said agreements, and he caused demand to be made upon plaintiff for the refund of the sum of $7,663.56, the difference between the amounts paid and the amounts due on the basis of the combinations made by the auditor. Plaintiff refused to make said refund and thereupon the disbursing quartermaster at Washington arbitrarily deducted said sum of $7,663.56 from plaintiff's subsequent bill No. S–1046 for passenger service rendered in August, 1917, and said bill S–1064 as so reduced was paid by Captain R. G. Wood's voucher No. 5500–T of March, 1918. When notified by the zone finance office at Washington that said account No. S–1064 had been passed for payment in the reduced amount, plaintiff, by letter dated January 18, 1918, notified said zone finance office that the quartermaster's warrant in settlement of said bill for the reduced amount when received would be accepted under protest subject to further settlement, and at the same time plaintiff rendered to the zone finance office its supplemental bill (S–394) for the amount of said deduction. The zone finance office on February 12, 1918, returned said supplemental bill with the statement that the deduction from account S–1064 had been made in accordance with instructions by the Auditor for the War Department and that it would be necessary for any further correspondence to be had with the auditor. Thereupon on April 9, 1918, plaintiff forwarded said supplemental bill to the auditor with a statement of the previous correspondence with the zone finance office. The Auditor for the War Department by his certificate No. 34611, dated October 9, 1918, disallowed said supplemental bill in full, "for the following-named reasons, viz:

"Under the decision of the Compt. of the Treas. dated May 10, 1918, if a through fare can be established by a combination of individual and party fares over junction points not authorized by the interterritorial military arrangements which is lower than any combination that can be established over junction and under terms authorized by said agreement, the Government is entitled to the lower fare providing the benefit of the 5% allowance is waived."

VI

The charges in plaintiff's corporate bill S–1064 were correct and proper as stated therein, and no objection to said charges was made by either the disbursing or accounting officers. The deduction of $7,663.56 was made by direction of the auditor, on account of an alleged overpayment of plaintiff's bill S–394, which had been paid in full by said disbursing officer. The balance of bill S–1064 was paid to plaintiff in March, 1918, and received by it under protest.

CONCLUSION OF LAW

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of $7,663.56.

It is, therefore, adjudged and ordered that the plaintiff recover of and from the United States the sum of seven thousand six hundred and sixty-three dollars and fifty-six cents ($7,663.56).

OPINION

CAMPBELL, Chief Justice, delivered the opinion of the court:

The facts show that plaintiff having rendered certain transportation service presented its bills therefor and was paid by a disbursing officer. Afterwards the disbursing officer's accounts were checked by the auditor, who held that the disbursing officer had paid more than he should have paid, and consequently his accounts were disallowed to that extent. The amount of these overpayments was deducted from other proper bills of plaintiff. The services for which the first bills were presented occurred in 1916, more than six years before the present action was brought, and the deduction from subsequent bills were made in 1917 or afterwards. The facts do not show definitely the dates of these subsequent deductions, but do show that the services for which the subsequent bills were rendered were as late as August, 1917. At any rate, the deductions were made within six years prior to the beginning of this suit. Plainly the plaintiff's cause of action did not arise until deductions were made from its subsequent bills. Its prior bills had been paid in full. Properly speaking, its right of action is upon or because of these deductions, and this is not barred by the statute of six years, the suit having been duly instituted within that time. We have lately had occasion to point out that the statute of limitations prescribed by the transportation act, 41 Stat. 492, does not begin to run against claims which arose before its enactment until the date of the passage of the act. See Sohn *v.* Waterson, 17 Wall. 596; Schaff, Receiver of M. K. & T. Ry. Co., decided this day. We think the deductions were not upon the proper basis. See Atchison, Topeka & Santa Fe R. R. Co., 256 U. S. 205; International & Great Northern Ry., 56

C. Cls. 336. The plaintiff is entitled to judgment, and it is so ordered.

GRAHAM, Judge; HAY, Judge; DOWNEY, Judge; and BOOTH, Judge, concur.

15 V. *Judgment*

At a Court of Claims held in the city of Washington on the third day of March, A. D. 1924, judgment was ordered to be entered as follows:

The court, upon the consideration of the premises, find in favor of the plaintiff, and do order, adjudge, and decree that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of seven thousand, six hundred and sixty-three dollars and fifty-six cents ($7,663.56).

By the COURT.

VI. *History of proceedings after entry of judgment*

On April 1, 1924, the defendant filed a motion for a new trial.

On April 28, 1924, the defendant's motion for a new trial was argued and submitted by Mr. George H. Foster, for the defendant, and by Mr. F. Carter Pope, for the plaintiff.

On May 5, 1924, the court filed an order overruling defendant's motion for a new trial.

VII. *Petition for appeal*

(Filed May 22, 1924)

From the judgment rendered in the above-entitled cause on the 3rd day of March, 1924, in favor of claimant, the defendants, by their Attorney General, on the 22nd day of May, 1924, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT H. LOVETT,
Assistant Attorney General.

VIII. *Order allowing petition for appeal*

On this 2nd day of June, 1924, it is ordered by the court that the defendant's application for appeal be and the same is allowed.

By the COURT.

16 In Court of Claims of the United States

[Title omitted.]

I, F. C. Kleinschmidt, assistant clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of

the findings of fact, conclusion of law, and opinion of the co
by Campbell, Ch. J.; of the judgment of the court; of the p
ceedings after entry of judgment; of the plaintiff's application
appeal; of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affi
the seal of said court at Washington City this fifth day of Ju
A. D. 1924.

[SEAL.] F. C. KLEINSCHMIDT,
Assistant Clerk, Court of Claim

(Indorsement on cover:) File No. 30,406. Court of Cla
Term No. 92. The United States, appellant, vs. Wabash Railv
Company. Filed June 11th, 1924. File No. 30,406.

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 91

THE UNITED STATES, APPELLANT

v.

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

On findings of fact the Court of Claims entered the judgment to be reviewed without an opinion, 59 Ct. Cls. 975, but referred to the cases of *Wabash Railway Co.* v. *United States*, 59 Ct. Cls. 322, and *Schaff, Receiver, Missouri, Kansas & Texas Railway* v. *United States*, 59 Ct. Cls. 318, both decided March 3, 1924.[1]

GROUNDS OF JURISDICTION

The judgment was entered in the Court of Claims March 17, 1924, and motion for a new trial was denied April 7, 1924. The appeal was taken June 2, 1924, under Sections 242 and 243, Judicial Code (R. 6, 7).

[1] *Wabash Railway* v. *United States* is No. 92, this Term, and is a companion to this case, No. 91.

STATEMENT

The single question is whether the suit of the St. Louis, San Francisco & Texas Railway Company is controlled by the general statute of limitations allowing six years for suits in District Courts and in the Court of Claims,[1] or by the three-year limitation applicable to suits by carriers to recover their charges found in Section 16, paragraph 3, of the Interstate Commerce Act, as amended by the Transportation Act of 1920, and as further amended by the Act of June 7, 1924.

In August, 1917, on Government bill of lading the Railway and its connections carried 27 carloads of military impedimenta, the property of the United States, from Fort Sill, Oklahoma, to Camp Bowie, Texas, and presented its bill on the basis of freight

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[1] SEC. 24, par. 20. Concurrent with the Court of Claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, and of all set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court. * * * *And provided further*, That no suit against the Government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made: * * *.

SEC. 156. Every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the claim first accrues: * * *.

rates published in tariffs filed with the Interstate Commerce Commission (R. 1, 5). On September 16, 1918, the Auditor for the War Department disallowed the bill (R. 5). On March 8, 1923, the petition was filed in the Court of Claims.

Section 16, paragraph (3), of the Interstate Commerce Act, as amended by the Transportation Act of 1920, approved February 28, 1920, is as follows (Chap. 91, 41 Stat. 456, 492):

> (3) All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, unless the carrier, after the expiration of such two years or within ninety days before such expiration, begins an action for recovery of charges in respect of the same service, in which case such period of two years shall be extended to and including ninety days from the time such action by the carrier is begun. In either case the cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after. A petition for the enforcement of an order for the payment of money shall be filed in the district court or State court within

one year from the date of the order, and not after.

By an Act approved June 7, 1924, paragraph (3) of Section 16 of the Interstate Commerce Act was further amended to read as follows (Chap. 325, 43 Stat. 633):

(3) (a) All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

(b) All complaints against carriers subject to this Act, for the recovery of damages not based on overcharges shall be filed with the commission within two years from the time the cause of action accrues, and not after, subject to subdivision (d).

(c) For recovery of overcharges action at law shall be begun or complaint filed with the commission against carriers subject to this Act within three years from the time the cause of action accrues, and not after, subject to subdivision (d), except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(d) If on or before expiration of the two-year period of limitation in subdivision (b) or of the three-year period of limitation

in subdivision (c) a carrier subject to this Act begins action under subdivision (a) for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

(e) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

(f) A petition for the enforcement of an order of the commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

(g) The term "overcharges" as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the commission.

(h) The provisions of this paragraph (3) shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue, except that actions at law begun or complaints filed with the commission against carriers subject to this Act for the recovery of overcharges where the cause of action accrued on or after March 1, 1920, shall not be deemed to be barred under subdivision (c)

> if such actions shall have been begun or complaints filed prior to enactment of this paragraph or within six months thereafter.

Thus, 2½ years elapsed from the time the freight was delivered until the Transportation Act of 1920 was enacted (August, 1917–February 28, 1920), leaving 6 months within which to bring suit under that act; 1 year and 5 months elapsed from the time the bill was disallowed until the Transportation Act was enacted (September 16, 1918–February 28, 1920), leaving more than 1½ years within which to bring suit under that act; more than 3 years elapsed after the Transportation Act was enacted until the petition was filed (February 28, 1920–March 8, 1923); approximately 4½ years elapsed from the date the Auditor disallowed the bill until the petition was filed (September 16, 1918–March 8, 1923); and approximately 5½ years elapsed from the date the freight was delivered until the petition was filed (August, 1917–March 8, 1923).

It will be noted that whether this cause of action accrued in August, 1917, when the service was rendered, or in September, 1918, when the bill was disallowed, it accrued prior to the passage of the Transportation Act of 1920.

THE QUESTIONS

The questions presented are whether the three-year limitation in the Transportation Act on suits by carriers to recover their charges is applicable

to suits by carriers to recover charges from the United States; and if so, whether the three-year statute of limitations found in the Transportation Act of 1920 was retrospective in its application so as to apply to a cause of action accruing prior to its passage.

If the Act of 1920 is held prospective, the question then involved is whether it would apply only to causes of action accruing after its passage or whether it applied to causes of action accruing prior to its passage but allowed three years from the date of its enactment.

Finally, if this cause of action was not barred by the Act of 1920, whether the amendment of June 7, 1924, to paragraph 3 of Section 16 of the Interstate Commerce Act operated to bar the cause of action, even though suit had been commenced upon it.

ASSIGNMENTS OF ERROR

I. The Court of Claims erred in holding that the cause of action was not barred by the statute of limitations found in paragraph 3 of Section 16 of the Interstate Commerce Act, as amended by the Transportation Act of 1920 and as amended by the Act of June 7, 1924.

II. The Court of Claims erred in granting judgment against the United States.

ARGUMENT

SUMMARY

I. The three-year statute of limitations upon suits by carriers to recover their charges found in the Transportation Act of 1920 is applicable to suits by carriers against the United States.

II. The cause of action in this case accrued either in August, 1917, when the service was rendered, or in September, 1918, when the bill was disallowed.

III. The amendment found in the Transportation Act to paragraph 3 of section 16 of the Interstate Commerce Act, applying a three-year limitation to suits by carriers to recover their charges, was retrospective and applied to a cause of action which accrued prior to its passage, where a reasonable time remained, as in this case, within which to bring suit.

IV. Even if the three-year limitation as enacted in the Transportation Act of 1920 was inapplicable to this cause of action, the amendment of June 7, 1924, operated to bar the claim, even though suit had been instituted and was pending.

V. If the three-year statute of limitations in the Transportation Act of 1920 is to be treated as prospective, it need not be limited in its application to causes of action accruing after its passage, but may be held to allow three years after its passage within which to commence suits on causes of action theretofore accruing.

VI. Conclusion.

I

THE THREE YEAR STATUTE OF LIMITATION IN THE TRANSPORTATION ACT OF 1920 APPLIES TO ACTIONS AGAINST THE UNITED STATES IN ANY COURT AS WELL AS TO ACTIONS AGAINST PRIVATE SHIPPERS

In broad and sweeping unequivocal language, and without reservation, exception, or provision, the Congress enacted that "*all* actions at law by carriers for recovery of their charges, or any part thereof, *shall* be begun within three years from the time the cause of action accrues, *and not after.*

Practically the entire revenue of any carrier consists of its charges for transportation. Only small amounts are derived from amusement parks, store rentals, news stands, etc. Readily observable is it that the prompt collection of all charges for transportation is of the utmost importance to the public. Therefore it is a part of the National policy that all charges of carriers for transportation shall be promptly collected. The three-year statute of limitations is made applicable to *all* charges, to *all* shippers, and to *all* courts, National and State, and was designed to accomplish a definite and specific purpose.

Paragraph (3) of Section 16 was enacted as an amendment to the Interstate Commerce Act by the Transportation Act of 1920, which "introduced into the federal legislation a new railroad policy. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy,* 257 U. S. 563, 585. * * * The new purpose was expressed in un-

equivocal language and to attain it, new rights, new obligations, new machinery were created. The new provisions took a wide range." *New England Divisions Case,* 261 U. S. 184, 189.

The fundamental purpose of the statute of limitations as contained in the acts to regulate commerce is to bring about uniformity, as "to have one period of limitation where the complaint is filed before the Commission and the varying periods of limitation of the different States, where a suit was brought in a court of competent jurisdiction; or to permit a railroad company to plead the statute of limitations as against some and to waive it as against others would be to prefer some and discriminate against others in violation of the terms of the Commerce Act which forbids all devices by which such results may be accomplished." *Phillips* v. *Grand Trunk Railway,* 236 U. S. 662, 667.

Such a policy enables the Government to inform itself of the financial status of these carriers, for after the lapse of three years there are no such charges to be claimed. Moreover, under such a policy preferences and discriminations which inevitably flow from noncollection of freight charges are diminished.

In *DuPont* v. *Davis, Director General,* 264 U. S. 456, 462, this Court, speaking by Mr. Justice Sutherland, said: "Statutes of limitation sought to be applied to bar rights of the Government,

must receive a strict construction in favor of the Government," citing *United States* v. *Whited & Wheless,* 246 U. S. 552, 561.

With equal force it may be said that statutes of limitation applied by the Government in bar of recovery against it should receive such a construction as may best protect the public interest, certainly when that construction is reasonable and brings harm to no one.

The policy of the legislation, the circumstances and conditions, the purposes which the statute was designed to subserve, the reasonableness of the fixed time, injury or lack of injury to others, and in this instance the right of the Government to assert the same right as any other shipper, are all matters, among other things, to be considered.

The all-embracing language of the statute is utterly void of any semblance of an exception or reservation and was so intended. Opposing counsel would read the language as follows: "All actions at law by carriers subject to this Act for recovery of their charges or any part thereof, *except actions against the United States,* shall be begun within three years from the time the cause of action accrues and not after."

The authority for such a construction is negatived by all legislation on the subject. Sec. 22 (Ch. 382, § 9, 25 Stat. 855, 862) provides that nothing shall prevent the carriage of property,

at free or reduced rates, "for the United States, State, or municipal Governments." There the exception was expressly made. In *United States v. State of Tennessee*, 262 U. S. 318, this Court held that in the absence of arrangement for such free or reduced rates, Section 22 might not be set up as a permission for the State to discriminate in favor of intrastate traffic against interstate traffic.

Similarly, under Section 405, par. (2) (Ch. 91, 41 Stat. 479), Congress enacted that "no carrier * * * shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to assure prompt payment of all such rates and charges and to prevent unjust discrimination, *provided* that the provisions * * * shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or any agency thereof." There again the exception was expressly made.

If Congress had intended to except the Government from the operation of this all-important statute affecting the commerce of the country, in which the Government is one of the largest of shippers, it is inconceivable that it would not have done so in express words.

In *St. Louis, Brownsville & Mexico Railway* v. *United States,* 268 U. S. 169, this Court, speaking through Mr. Justice Brandeis, said (pp. 173–174):

> In respect to furnishing transportation, a railroad ordinarily bears to the Government the same relation that it does to a private person using its facilities. It may exact payment either in advance or upon the completion of the service rendered. It may, as a matter of accommodation or convenience, give a reasonable credit. Payment for transportation, as for other service or supplies, may ordinarily be secured by presenting the claim to the appropriate disbursing officer of the department served.

The fact that the Government consented to be sued only in the Court of Claims, and in the District Courts when the requisite jurisdictional amount appears, does not alter the situation. The three-year limitation is binding on *all* courts. It is idle to argue that if Wabash Company brought a suit in the Municipal Court of Chicago to recover such charges from a shipper the three-year limitation would apply, and if it brought a similar suit for similar charges against the United States in the Court of Claims or the District Court the limitation would not apply. All courts are charged with the enforcement of the Interstate Commerce Act which fixes the limitation; otherwise we would have as many statutes of limitations as we have States of the Union with the six-year limitation.

under the Court of Claims act thrown in. The fundamental purpose of the statute was to bring about uniformity.

In *Fort Pitt Gas Co.* v. *United States,* 49 Ct. Cls., 224, 234, the Court of Claims, speaking through Chief Justice Campbell, said:

> The general statute of limitations of actions in this court, sec. 156, Judicial Code, prescribes that a claim is barred unless the petition be filed "within six years after the claim first accrues." This statute, fixing a rule applicable to cases generally, is not necessarily inconsistent with the sections of the Revised Statutes above mentioned, which fix the limitation for a particular class of cases "in any court." Statutes in *pari materia* are to be construed together, and repeals by implication are not favored if the acts can reasonably stand together. *The Distilled Spirits,* 11 Wall. 365; *State* v. *Stoll,* 17 Wall. 425, 436; *Rogers' Case,* 36 C Cls. 266; 185 U. S. 83; *Petri* v. *Creelman Lumber Co.,* 199 U. S. 487, 497. "The general statute is read as silently excluding from its operation the cases which have been provided for by the special one." Endlich Inter. Stat., sec. 223. We deem it unnecessary to decide the question as to whether a suit can be brought in this court under the statute applicable to this court or should be brought in the class of cases under consideration against the collector, because, under the view we take, the claimant's cause of action is barred, even if the

> court have jurisdiction of such a suit brought in time. We hold that the limitation fixed by section 3227, Revised Statutes, is applicable and not the six-year limitation of section 156, Judicial Code. *Christie-Street Com. Co.* v. *United States,* 129 Fed. 506; 136 Fed. 326; *Schwarzchild-Sulzberger & Co.* v. *Rucker, collector,* 143 Fed. 656.

In *Kahn, Executor,* v. *United States,* 55 C. Cls., 271, 286 (affirmed. 257 U. S. 244). the Court of Claims said:

> This action was commenced July 2, 1917. The general statute of limitations in this court (section 156, Judicial Code) is not permissive in form in the sense that it specifically permits *any action* of which this court has jurisdiction to be brought at any time within six years, notwithstanding any other statute, but it forever bars any claim unless sued upon or transmitted within six years, and hence there is no necessary conflict between it and the provisions of section 3227, applicable to a particular class of cases, prohibiting the maintenance of any suit of this character *in any court* unless brought within two years. *Fort Pitt Gas Co.* v. *United States,* 49 C. Cls., 224 at 234, citing *Christie-Street Com. Co.* v. *United States,* in the Circuit Court of Appeals for the Eighth Circuit, 136 Fed. 326, in which it was said: "It is an action directly against the United States, and the logical and unavoidable conclusion is that it was barred by the limitation of section

3227, because it was not commenced until more than two years after the cause of action it presents accrued."

II

THE CAUSE OF ACTION ACCRUED EITHER IN AUGUST, 1917, OR SEPTEMBER, 1918

The service was rendered in August, 1917. The bill was disallowed in September, 1918. Whether the cause of action accrued when the service was rendered in August, 1917, or when the bill was disallowed in September, 1918, is unimportant. In the one case, if the three-year statute of limitations was applicable and ran from the date of the accrual of the cause of action, the cause of action would have been barred in August, 1920, allowing nearly six months after the passage of the Transportation Act of 1920 within which to bring suit; while in the other case, assuming the cause of action accrued in September, 1918, it would have been barred by the three-year statute of limitations in September, 1921, more than a year and a half after the passage of the Transportation Act of 1920. In either of the cases the action would be barred before the suit was commenced on March 8, 1923.

III

THE THREE YEAR STATUTE OF LIMITATIONS ENACTED IN THE TRANSPORTATION ACT OF 1920 WAS RETROSPECTIVE IN ITS APPLICATION

The well-known rule of construction that all statutes are to be considered prospective unless

language is express to the contrary (*Danzer* v. *Gulf & Ship Island Railroad,* 000 U. S. 000, decided June 8, 1925; *Fullerton Co.* v. *Northern Pacific,* 266 U. S. 435, 437) is inapplicable to the present controversy. Courts have never hesitated to give a retrospective effect to statutes of limitation when the time remaining to the plaintiff within which to bring the suit was reasonable.

"If no right is impaired or destroyed by giving a statute of limitation a retroactive effect, the reason of the rule upon which the plaintiff relies ceases, and the rule itself should also cease" (*Button* v. *Atchison, Topeka & Santa Fe,* 1 Fed. Rep. (2d) 709, 711).

That six months or one year was a reasonable time within which to bring the suit after the statute became effective is abundantly sustained by the great weight of authority.

United States v. *Morena,* 245 U. S. 392, 397.

Canadian Northern Railway v. *Eggen,* 252 U. S. 553, 562.

Saranac Land Co. v. *Comptroller of New York,* 177 U. S. 318, 323, 324.

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Koshkonong v. *Burton,* 104 U. S. 668, 674, 675.

Schauble v. *Schulz,* 137 Fed. Rep. 389, 393.

McGahey v. *Virginia,* 135 U. S. 662, 705, 707.

In *Button* v. *Atchison, Topeka & Santa Fe*, 1 Fed. Rep. (2d) 709, 711, 712, paragraph (3) of Section 16 received the very careful and full consideration of the Circuit Court of Appeals for the Eighth Circuit, Circuit Judge Kenyon and District Judges Amidon and Scott concurring. Every possible phase and effect of the statute was considered. In giving the statute a retrospective application, and denying the right of the carrier to maintain the suit to recover charges claimed to be due from the shipper, the Court said:

> (3) At the time the federal statute took effect there remained eight months within which the plaintiff could have brought its action under that law. That was a reasonable time. The question therefore presented is: Did Congress intend to preserve the plaintiff's right by this legislation or to enlarge it? Was it the intent of the act to extend the period of limitation for the carrier for two years and four months? No such intent is expressed in the law, and there is no reason in justice for thus enlarging the plaintiff's right by construction.
>
> It is not a question of power, but of intent. It is settled beyond controversy that the legislature may apply a new statute of limitations to existing rights and shorten the time for their enforcement.
>
> * * * * *
>
> (4) There is another ground upon which the case may be rested. Plaintiff's right of action is given by statute. It was not

created for its enrichment but to protect the public against secret rebates and discriminations. It is not a right of contract or of property. The right, therefore, is at all times under the full control of the legislature. It may limit it in any way without impairing any constitutional right of the plaintiff.

* * * * *

The Supreme Court has frequently commented upon the hardship inflicted upon shippers by suits of this character. *Pittsburgh, etc., Ry. Co.* v. *Fink*, 250 U. S. 577, 582; *Louisville, etc., Ry. Co.* v. *Maxwell*, 237 U. S. 94, 97. They are allowed not for the benefit of the carrier, but for the protection of the public. The short limit fixed by the act of 1920 has for its object the safeguarding of shippers.

* * * * *

The shipment was delivered by the plaintiff October 24, 1917. By the express language of the federal statute above quoted, that was the time when plaintiff's cause of action accrued. The three-year period expired October 24, 1920. The present action was commenced September 19, 1922. For the reasons above stated, plaintiff's right of recovery was barred, and the decision of the trial court should be reversed.

In *Lamb* v. *Powder River Live Stock Co.*, 132 Fed. Rep. 434, a statute of limitations of Nebraska reduced, in some instances to three months, the period within which an action may be com-

menced upon a judgment rendered without the State upon a cause of action accruing more than six years before the commencement of the action upon the judgment. Holding that the shortened limitation was intended to apply to actions upon existing judgments, and that the *three-months* limitation was unreasonable and void, Circuit Judge Van Devanter (Circuit Judges Sanborn and Hook concurring) said:

> Thus, from whatever point the shortened limitation in the act of 1895 is considered, the question arises whether it is reasonable. No reported decision has come under our observation which sustains a like limitation. The following cases sustain limitations of approximately the periods named: *Terry* v. *Anderson*, 95 U. S. 628, nine and one-half months; *Vance* v. *Vance*, 108 U. S. 245, eight and one-half months; *Wheeler* v. *Jackson*, 137 U. S. 245, six months; *Turner* v. *New York*, 168 U. S. 90, six months; *Stine* v. *Bennett*, 13 Minn. 153 (Gil. 138), four and one-half months; *Russell* v. *Akeley Lumber Co.*, 45 Minn. 376, six months; *Bigelow* v. *Bemis*, 2 Allen, 496, five months; *Smith* v. *Packard*, 12 Wis. 371, eight and one-half months; *Cameron* v. *Louisville, etc., Ry. Co.*, 69 Miss. 78, one year; *Horbach* v. *Miller*, 4 Neb. 31, four and one-half months; *Myers* v. *Wheelock*, 60 Kan. 747, six months; *Power* v. *Kitching*, 10 N. D. 254, 86 N. W. 737, seven months. In *McGahey* v. *Virginia*, 135 U. S. 662, 708,

a limitation of one year was declared unreasonable, and in *Berry* v. *Ransdall,* 4 Metc. (Ky.) 292, the same was said of a limitation of thirty days. In *Bank* v. *Braithwaite,* 7 N. D. 358, 372, it was doubted whether three and one-half months was a reasonable time, but thirteen months was pronounced reasonable. No useful purpose would be served by referring more particularly to the limitations which were sustained or rejected in these cases. It is sufficient to say that all of the cases recognize the true rule to be that a limitation is unreasonable which does not, before the bar takes effect, afford full opportunity for resort to the courts for the enforcement of the rights upon which the limitation is intended to operate, and that this opportunity must be afforded in respect to existing rights of action after they come within the present or prospective operation of the statute and in respect of prospective rights after they accrue.

IV

EVEN IF THE THREE-YEAR STATUTE OF LIMITATIONS AS ENACTED IN THE TRANSPORTATION ACT OF 1920 WAS INAPPLICABLE TO THIS CAUSE OF ACTION, THE AMENDMENT OF JUNE 7, 1924, OPERATED TO BAR THE CLAIM, EVEN THOUGH SUIT HAD BEEN INSTITUTED AND WAS PENDING

Assuming that the three-year statute of limitations enacted in 1920 is to be treated as prospective in the sense of applying only to causes of action accruing after its passage, it is then neces-

sary to consider the effect of the amendment of June 7, 1924.

At the time of the passage of the Act of June 7, 1924, litigation over this statute had already occurred, and the differences of opinion respecting the application of the statute were no doubt called to the attention of Congress (*Louisville Cement Co.* v. *Commission,* 246 U. S. 638). The Act of June 7, 1924, reiterates the provision that actions at law by carriers for recovery of their charges shall be begun within three years from the time the cause of action accrues. Then follows subdivision (h), which is as follows (Ch. 325, 43 Stat. 633):

> The provisions of this paragraph (3) shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue, except that actions at law begun or complaints filed with the commission against carriers subject to this Act for the recovery of overcharges where the cause of action accrued on or after March 1, 1920, shall not be deemed to be barred under subdivision (c) if such actions shall have been begun or complaints filed prior to enactment of this paragraph or within six months thereafter.

By the express language of subdivision (h) the effect of the statute was to then bar causes of action not in suit which had accrued three years or more prior to the passage of the Act

of June 7, 1924. It is evident that subdivision (h) made no change with respect to the statute of limitations applicable to causes of action accruing after the passage of the Transportation Act of 1920, because that statute admittedly applied a three-years statute of limitations to causes of action accruing after its passage. The retrospective operation of subdivision (h) was therefore limited to causes of action which had accrued prior to the passage of the Transportation Act of 1920. The sole and only purpose of subdivision (h), therefore, must have been to make it clear that the three-years statute of limitations applied to causes of action accruing prior to the Transportation Act of 1920 and to destroy them and prevent their prosecution, unless suit had theretofore been brought within three years from the time the cause of action had accrued. No other interpretation of the express language of subdivision (h) seems possible without distorting its terms or resorting to judicial legislation. There is nothing about the statute which shows that there could have been any intent to discriminate in favor of claims where suit had already been commenced, although not brought within three years from the accrual of the cause of action, as against cases where more than three years had elapsed since the cause of action had accrued and on which suit had not yet been commenced.

If subdivision (h) of the Act of 1924 had stopped short after providing that the paragraph applied to cases where causes of action had theretofore accrued, it still might have been possible to construe the section as not applying to cases which had been commenced and were pending, although brought more than three years after the cause of action had accrued, but the exception contained in the last part of subdivision (h) seems to render this construction impossible. The exception provides that certain actions shall not be deemed barred—

> if such actions shall have been begun or complaints filed prior to enactment of this paragraph or within six months thereafter.

This exception seems to make it plain that subdivision (e), relating to suits or complaints for overcharges, would have operated to bar pending actions which had not been brought within three years of the time the cause of action accrued, if such action was not saved by the exception. It is true that this exception in subdivision (h) refers only to subdivision (e), which deals with claims by shippers against carriers for overcharges; but if subdivision (e) construed in connection with subdivision (e) and the first part of subdivision (h) would have operated to bar causes of action, even though suits were then pending, it is impossible to see why subdivision (a), relating to suits by carriers, construed in connection with

subdivision (e) and the first part of subdivision (h) would not have done likewise. The conclusion seems inevitable that Congress understood that, without a saving exception such as is contained in subdivision (h), the fact that a suit had already been commenced and was pending would not save the cause of action against the limitation prescribed.

The plain purpose of the Act was to make the limitation of three years apply to causes of action accrued prior to the passage of the 1920 Act; and to apply the new limitation to cases where suit had already been commenced when the 1924 Act was passed involves a result no more drastic than to apply it to cases where suit had not been commenced but a cause of action still existed, through the fact that the six-year statute of limitation had not run. It may be argued that this construction would result in the Act being declared unconstitutional and void as respects certain classes of cases within its terms. That may be admitted if the Act of 1924 is to be treated as effecting a change in the law and not as a declaration of the intent of the 1920 Act. The limitation is not restricted in its application to suits against the Government. It applies to suits by carriers against private shippers. The same language can not mean one thing for the Government and another thing for private shippers. It has been held that the due process clause of the Fourteenth

Amendment prevents a State from passing a statute of limitations abrogating existing causes of action without giving a reasonable opportunity to sue after the passage of the Act. The due process clause of the Fifth Amendment, operating on Congress, would seem to prevent Congress from passing a valid statute abrogating an existing cause of action in favor of a carrier against a private shipper without giving the carrier a reasonable opportunity to sue after the passage of the Act.

It may be argued that because the Act of 1924 would be inoperative and invalid as applied to cases where the defendant is a private shipper but in other respects like the present cases, Congress could not have intended to discriminate in favor of the Government; and if the Act is obnoxious to constitutional provisions as applied to cases like the present, involving private shippers, it should be considered inoperative as to any such case against the Government. On the other hand, it may be said that the United States may withhold its consent to be sued, and having once given its consent it may withdraw it; that as applied to these particular cases Congress had the right to withdraw its consent to a suit against the United States, even though suit had been instituted; that as applied to these particular cases the Act is constitutional; and that the Court, in view of the express language and necessary implications to be drawn from the language of the

statute, should enforce it in every case where it is not met with constitutional objections.

We have discussed the Act of June 7, 1924, on the theory that it changed the law. In this view it would undoubtedly be unconstitutional as applied to some cases involving private shippers. Such a result should be avoided if possible. *It may be avoided* by construing the 1920 Act as applying to causes of action accruing prior to its passage, making the time run either from the accrual or from the passage of the Act of 1920, and thus accepting the Act of 1924, not as affecting a change in the law but as declaratory of the purpose of the earlier Act. The amendment of June 7, 1924, fastens paragraph (3) upon the cause of action of appellant beyond any doubt, whether the cause of action arose in August, 1917, when the freight was delivered; or in September, 1918, when the bill was disallowed, *Louisville Cement Co.* v. *Commission,* 246 U. S. 638.

In *Jordan* v. *Roche,* 228 U. S. 436, 446, it was held that the Act of February 4, 1909 (Ch. 65, 35 Stat. 594), was unnecessary for the purpose of subjecting bay rum imported from Porto Rico to the tax imposed upon distilled spirits, inasmuch as the bay rum was taxable under the Foraker Act of April 12, 1900 (Ch. 191, 31 Stat. 77). Speaking of the later Act, Mr. Justice McKenna said: "The law was not the declaration of a new policy but a more explicit expression of the purpose of the prior

law, made necessary by the judicial construction of that law."

V

IF THE THREE YEAR LIMITATION ENACTED IN THE TRANSPORTATION ACT OF 1920 IS TO BE TREATED AS PROSPECTIVE, IT NEED NOT BE LIMITED IN ITS APPLICATION TO CAUSES OF ACTION ACCRUING AFTER ITS PASSAGE, BUT MAY BE HELD TO ALLOW THREE YEARS AFTER ITS PASSAGE WITHIN WHICH TO COMMENCE SUITS ON CAUSES OF ACTION THERETOFORE ACCRUING

Assuming that the Act of 1920 is to be given a prospective operation, the question arises as to what form this operation will take. In dealing with this subject in *Sohn* v. *Waterson,* 17 Wall. 596, 599, Mr. Justice Bradley said:

> To avoid such a result and to give the statute a construction that will enable it to stand, courts have given it a prospective operation. In doing this, three different modes have been adopted by different courts. One is to make the statute apply only to causes of action arising after its passage. But as this construction leaves all actions existing at the passage of the act without any limitation at all (which, it is presumed, could not have been intended), another rule adopted is to construe the statute as applying to such existing actions only as have already run out a portion of the statutory time, but which still have a reasonable time left for prosecution before the statutory time expires—which reasonable time is to be estimated by the court—leaving all other actions accruing prior to the statute

unaffected by it. The latter rule does not seem to be founded on any better principle than the former. It still leaves a large class of actions entirely unprovided with any limitation whatever, or, as to them, is unconstitutional, and is a more arbitrary rule than the first. A third construction is that which was adopted by the court below in this case, and which we regard as much more sound than either of the others. It was substantially adopted by this court in the cases of *Ross* v. *Duval* (13 Pet. 62) and *Lewis* v. *Lewis* (7 How. 778). In those cases certain statutes of limitation—one in Virginia and the other in Illinois—had originally excepted from their operation nonresidents of the State, but this exception had been afterwards repealed, and this court held that the nonresident parties had the full statutory time to bring their actions after the repealing acts were passed, although such actions may have accrued at an earlier period. "The question is," says C. J. Taney (speaking in the latter of the cases just cited), "from what time is this limitation to be calculated? Upon principle it would seem to be clear that it must commence when the cause of action is first subjected to the operation of the statute, unless the legislature has otherwise provided." It is true that in the subsequent case of *Murray* v. *Gibson* (15 Id. 421), this court followed the decisions of the Supreme Court of Mississippi in its construction of a statute of that

> State and held that it applied only to actions accruing after the statute was passed. But that decision was made in express deference to those of the State court, which were regarded as authoritative. In the present case we are not bound by any decisive construction of the State court on this point.

In dealing with this statute in *Schaff, Receiver of the Missouri, Kansas & Texas Ry. Co. of Texas,* v. *The United States,* 59 Ct. Cls. 318, the court adopted that solution which results in allowing three years after the passage of the Act to bring suit on causes of action accruing prior to its passage. It may be that some of the considerations which induced the Court in *Sohn* v. *Waterson* to adopt this solution of a prospective operation for the statute do not exist in this case, because making the statute apply only to causes of action accruing after its passage does not leave a cause of action accruing prior to its passage without any limitation at all, as the general six-year statute would apply to all causes not covered by the three-year statute. That Congress intended, however, that the three-year statute adopted in the Transportation Act of 1920 should be applicable to causes of action already accrued, to the extent at least of limiting the time for commencing suit to a period of three years after the passage of the statute, is indicated by the purpose of the statute, which was to produce uni-

formity and reduce the time within which such suits might be commenced.

The amendment of June 7, 1924, hereinbefore more fully discussed, should be treated not as effecting a change in the law but as a declaration of the purpose of Congress to make the Act of 1920 apply to causes of action accruing prior to the passage of the 1920 Act to the extent at least of placing on them a limitation of three years from the passage of the Act of 1920. *Any other interpretation of the Act of 1920 results in giving an effect to the Act of 1924 which in some cases involving private shippers would render the Act of 1924 unconstitutional.*

VI

CONCLUSION

It must be concluded, therefore, that the three-year statute of limitations contained in the Transportation Act applies as well in favor of the Government as in favor of private shippers; that the limitation first applied in the Transportation Act of 1920 may properly be applied to causes of action accruing prior to its passage, where, as in this case, a reasonable time remained after the passage of the Act within which to commence suit; that if the Act of 1920 must be treated as prospective in its application, a construction making it applicable to causes of action accruing prior to its passage, but allowing three years after its

passage within which to bring suit, is sustained by the authorities and consistent with the purpose of the Act; and, finally, in the event that legislation prior to June 7, 1924, did not bar this claim, the amendment of that date, expressly retrospective in its operation and evidently intended to apply to claims involving pending actions as well as to those in which no suit has been commenced, operates to bar the claim.

The judgment of the Court of Claims should be reversed and the cause remanded with directions to dismiss the petition.

WILLIAM D. MITCHELL,
Solicitor General.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

OCTOBER, 1925.

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 92

THE UNITED STATES, APPELLANT

v.

WABASH RAILWAY COMPANY

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims (R. 10) is found in 59 Ct. Cls. 322.

GROUNDS OF JURISDICTION

The judgment to be reviewed was entered in the Court of Claims March 3, 1924. A motion for a new trial was entertained and denied May 5, 1924. Appeal was taken June 2, 1924, under Sections 242 and 243, Judicial Code. (R. 11.)

STATEMENT

The single question is whether the suit of the Wabash Railway Company is controlled by the general statute of limitations allowing six

years for suits in District Courts and in the Court of Claims,[1] or by the three-year limitation applicable to suits by carriers to recover their charges found in Section 16, paragraph 3, of the Interstate Commerce Act, as amended by the Transportation Act of 1920, and as further amended by the Act of June 7, 1924.

The Wabash Railway Company furnished passenger service to the United States in August, 1917. The bill for this service, less a deduction made by the United States, was paid in March, 1918. (R. 9.) This suit was brought on March 17, 1923, to recover the balance unpaid of the bill for services rendered in August, 1917, on the theory that the deduction was unauthorized.

Section 16, paragraph (3), of the Interstate

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[1] SEC. 24, par. 20. Concurrent with the Court of Claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, and of all set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court. * * * *And provided further*, That no suit against the Government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made: * * *.

SEC. 156. Every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the claim first accrues: * * *.

Commerce Act, as amended by the Transportation Act of 1920, approved February 28, 1920, is as follows (Chap. 91, 41 Stat. 456, 492):

> (3) All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, unless the carrier, after the expiration of such two years or within ninety days before such expiration, begins an action for recovery of charges in respect of the same service, in which case such period of two years shall be extended to and including ninety days from the time such action by the carrier is begun. In either case the cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after. A petition for the enforcement of an order for the payment of money shall be filed in the district court or State court within one year from the date of the order, and not after.

By an Act approved June 7, 1924, paragraph (3) of Section 16 of the Interstate Commerce Act was further amended to read as follows (Chap. 325, 43 Stat. 633):

(3) (a) All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

(b) All complaints against carriers subject to this Act, for the recovery of damages not based on overcharges shall be filed with the commission within two years from the time the cause of action accrues, and not after, subject to subdivision (d).

(c) For recovery of overcharges action at law shall be begun or complaint filed with the commission against carriers subject to this Act within three years from the time the cause of action accrues, and not after, subject to subdivision (d), except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(d) If on or before expiration of the two-year period of limitation in subdivision (b) or of the three-year period of limitation in subdivision (c) a carrier subject to this Act begins action under subdivision (a) for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the

time such action is begun or such charges are collected by the carrier.

(e) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

(f) A petition for the enforcement of an order of the commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

(g) The term "overcharges" as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the commission.

(h) The provisions of this paragraph (3) shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue, except that actions at law begun or complaints filed with the commission against carriers subject to this Act for the recovery of overcharges where the cause of action accrued on or after March 1, 1920, shall not be deemed to be barred under subdivision (c) if such actions shall have been begun or complaints filed prior to enactment of this paragraph or within six months thereafter.

It will be noted that whether this cause of action accrued in August, 1917, when the service was rendered, or in March, 1918, when part of the bill

was paid, it accrued prior to the passage of the Transportation Act of 1920.

THE QUESTIONS

The questions presented are whether the three-year limitation in the Transportation Act on suits by carriers to recover their charges is applicable to suits by carriers to recover charges from the United States; and if so, whether the three-year statute of limitations found in the Transportation Act of 1920 was retrospective in its application so as to apply to a cause of action accruing prior to its passage.

If the Act of 1920 is held prospective, the question then involved is whether it would apply only to causes of action accruing after its passage or whether it applied to causes of action accruing prior to its passage but allowed three years from the date of its enactment.

Finally, if this cause of action was not barred by the Act of 1920, whether the amendment of June 7, 1924, to paragraph 3 of Section 16 of the Interstate Commerce Act operated to bar the cause of action, even though suit had been commenced upon it.

ASSIGNMENTS OF ERROR

I. The Court of Claims erred in holding that the cause of action was not barred by the statute of limitations found in paragraph 3 of Section 16 of the Interstate Commerce Act, as amended by

the Transportation Act of 1920 and as amended by the Act of June 7, 1924.

II. The Court of Claims erred in granting judgment against the United States.

ARGUMENT

SUMMARY

I. The three-year statute of limitations upon suits by carriers to recover their charges found in the Transportation Act of 1920 is applicable to suits by carriers against the United States.

II. The cause of action in this case accrued either in August, 1917, when the service was rendered, or in March, 1918, when part of the charges were paid.

III. The amendment found in the Transportation Act to paragraph 3 of section 16 of the Interstate Commerce Act, applying a three-year limitation to suits by carriers to recover their charges, was retrospective and applied to a cause of action which accrued prior to its passage, where a reasonable time remained, as in this case, within which to bring suit.

IV. Even if the three-year limitation as enacted in the Transportation Act of 1920 was inapplicable to this cause of action, the amendment of June 7, 1924, operated to bar the claim, even though suit had been instituted and was pending.

V. If the three-year statute of limitations in the Transportation Act of 1920 is to be treated as prospective, it need not be limited in its ap-

plication to causes of action accruing after its passage, but may be held to allow three years after its passage within which to commence suits on causes of action theretofore accruing.

VI. Conclusion.

I

THE THREE YEAR STATUTE OF LIMITATION IN THE TRANSPORTATION ACT OF 1920 APPLIES TO ACTIONS AGAINST THE UNITED STATES IN ANY COURT AS WELL AS TO ACTIONS AGAINST PRIVATE SHIPPERS

In broad and sweeping unequivocal language, and without reservation, exception, or provision, the Congress enacted that "*all* actions at law by carriers for recovery of their charges, or any part thereof, *shall* be begun within three years from the time the cause of action accrues, *and not after.*

Practically the entire revenue of any carrier consists of its charges for transportation. Only small amounts are derived from amusement parks, store rentals, news stands, etc. Readily observable is it that the prompt collection of all charges for transportation is of the utmost importance to the public. Therefore it is a part of the National policy that all charges of carriers for transportation shall be promptly collected. The three-year statute of limitations is made applicable to *all* charges, to *all* shippers, and to *all* courts, National and State, and was designed to accomplish a definite and specific purpose.

Paragraph (3) of Section 16 was enacted as an amendment to the Interstate Commerce Act by the Transportation Act of 1920, which "introduced into the federal legislation a new railroad policy. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy,* 257 U. S. 563, 585. * * * The new purpose was expressed in unequivocal language and to attain it, new rights, new obligations, new machinery were created. The new provisions took a wide range." *New England Divisions Case,* 261 U. S. 184, 189.

The fundamental purpose of the statute of limitations as contained in the acts to regulate commerce is to bring about uniformity, as "to have one period of limitation where the complaint is filed before the Commission and the varying periods of limitation of the different States, where a suit was brought in a court of competent jurisdiction; or to permit a railroad company to plead the statute of limitations as against some and to waive it as against others would be to prefer some and discriminate against others in violation of the terms of the Commerce Act which forbids all devices by which such results may be accomplished." *Phillips* v. *Grand Trunk Railway,* 236 U. S. 662, 667.

Such a policy enables the Government to inform itself of the financial status of these carriers, for after the lapse of three years there are no such charges to be claimed. Moreover, under such a policy preferences and discriminations which in-

evitably flow from noncollection of freight charges are diminished.

In *DuPont* v. *Davis, Director General,* 264 U. S. 456, 462, this Court, speaking by Mr. Justice Sutherland, said: "Statutes of limitation sought to be applied to bar rights of the Government, must receive a strict construction in favor of the Government," citing *United States* v. *Whited & Wheless,* 246 U. S. 552, 561.

With equal force it may be said that statutes of limitation applied by the Government in bar of recovery against it should receive such a construction as may best protect the public interest, certainly when that construction is reasonable and brings harm to no one.

The policy of the legislation, the circumstances and conditions, the purposes which the statute was designed to subserve, the reasonableness of the fixed time, injury or lack of injury to others, and in this instance the right of the Government to assert the same right as any other shipper, are all matters, among other things, to be considered.

The all-embracing language of the statute is utterly void of any semblance of an exception or reservation and was so intended. Opposing counsel would read the language as follows: "All actions at law by carriers subject to this Act for recovery of their charges or any part thereof, *except actions against the United States,* shall be

begun within three years from the time the cause of action accrues and not after."

The authority for such a construction is negatived by all legislation on the subject. Sec. 22 (Ch. 382, § 9, 25 Stat. 855, 862) provides that nothing shall prevent the carriage of property, at free or reduced rates, "for the United States, State, or municipal Governments." There the exception was expressly made. In *United States* v. *State of Tennessee,* 262 U. S. 318, this Court held that in the absence of arrangement for such free or reduced rates, Section 22 might not be set up as a permission for the State to discriminate in favor of intrastate traffic against interstate traffic.

Similarly, under Section 405, par. (2) (Ch. 91, 41 Stat. 479), Congress enacted that "no carrier * * * shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to assure prompt payment of all such rates and charges and to prevent unjust discrimination, *provided* that the provisions * * * shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or any agency thereof." There again the exception was expressly made.

If Congress had intended to except the Government from the operation of this all-important statute affecting the commerce of the country, in which the Government is one of the largest of shippers, it is inconceivable that it would not have done so in express words.

In *St. Louis, Brownsville & Mexico Railway* v. *United States,* 268 U. S. 169, this Court, speaking through Mr. Justice Brandeis, said (pp. 173–174):

> In respect to furnishing transportation, a railroad ordinarily bears to the Government the same relation that it does to a private person using its facilities. It may exact payment either in advance or upon the completion of the service rendered. It may, as a matter of accommodation or convenience, give a reasonable credit. Payment for transportation, as for other service or supplies, may ordinarily be secured by presenting the claim to the appropriate disbursing officer of the department served.

The fact that the Government consented to be sued only in the Court of Claims, and in the District Courts when the requisite jurisdictional amount appears, does not alter the situation. The three-year limitation is binding on *all* courts. It is idle to argue that if Wabash Company brought a suit in the Municipal Court of Chicago to recover such charges from a shipper the three-year limitation would apply, and if it brought a similar suit for similar charges against the United States in the Court of Claims or the District Court the

limitation would not apply. All courts are charged with the enforcement of the Interstate Commerce Act which fixes the limitation; otherwise we would have as many statutes of limitations as we have States of the Union with the six-year limitation under the Court of Claims act thrown in. The fundamental purpose of the statute was to bring about uniformity.

In *Fort Pitt Gas Co.* v. *United States,* 49 Ct. Cls., 224, 234, the Court of Claims, speaking through Chief Justice Campbell, said:

> The general statute of limitations of actions in this court, sec. 156, Judicial Code, prescribes that a claim is barred unless the petition be filed "within six years after the claim first accrues." This statute, fixing a rule applicable to cases generally, is not necessarily inconsistent with the sections of the Revised Statutes above mentioned, which fix the limitation for a particular class of cases "in any court." Statutes in *pari materia* are to be construed together, and repeals by implication are not favored if the acts can reasonably stand together. *The Distilled Spirits,* 11 Wall. 365; *State* v. *Stoll,* 17 Wall. 425, 436; *Rogers' Case,* 36 C Cls. 266; 185 U. S. 83; *Petri* v. *Creelman Lumber Co.,* 199 U. S. 487, 497. "The general statute is read as silently excluding from its operation the cases which have been provided for by the special one." Endlich Inter. Stat., sec. 223. We deem

> it unnecessary to decide the question as to whether a suit can be brought in this court under the statute applicable to this court or should be brought in the class of cases under consideration against the collector, because, under the view we take, the claimant's cause of action is barred, even if the court have jurisdiction of such a suit brought in time. We hold that the limitation fixed by section 3227, Revised Statutes, is applicable and not the six-year limitation of section 156, Judicial Code. *Christie-Street Com. Co.* v. *United States,* 129 Fed. 506; 136 Fed. 326; *Schwarzchild-Sulzberger & Co.* v. *Rucker, collector,* 143 Fed. 656.

In *Kahn, Executor,* v. *United States,* 55 C. Cls., 271, 286 (affirmed, 257 U. S. 244), the Court of Claims said:

> This action was commenced July 2, 1917. The general statute of limitations in this court (section 156, Judicial Code) is not permissive in form in the sense that it specifically permits *any action* of which this court has jurisdiction to be brought at any time within six years, notwithstanding any other statute, but it forever bars any claim unless sued upon or transmitted within six years, and hence there is no necessary conflict between it and the provisions of section 3227, applicable to a particular class of cases, prohibiting the maintenance of any suit of this character *in any court* unless brought within two years. *Fort Pitt Gas Co.* v. *United States,* 49 C. Cls., 224 at

234, citing *Christie-Street Com. Co.* v. *United States*, in the Circuit Court of Appeals for the Eighth Circuit, 136 Fed. 326, in which it was said: "It is an action directly against the United States, and the logical and unavoidable conclusion is that it was barred by the limitation of section 3227, because it was not commenced until more than two years after the cause of action it presents accrued."

II

THE CAUSE OF ACTION ACCRUED EITHER IN AUGUST, 1917, OR MARCH, 1918

The service was rendered in August, 1917. Part of the charges was paid in March, 1918. Whether the cause of action accrued when the service was rendered, in August, 1917, or when the bill was paid, March, 1918, is unimportant. In the one case, if the three-year statute of limitation was applicable and ran from the date of the accrual of the cause of action, the cause of action would have been barred in August, 1920, allowing nearly six months after the passage of the Transportation Act of 1920 within which to bring suit; while in the other case, assuming the cause of action accrued in March, 1918, it would have been barred by the three-year statute of limitation in March, 1921, more than a year after the passage of the Transportation Act of 1920. In either of the cases the action would be barred before the suit was commenced on March 17, 1923.

III

THE THREE YEAR STATUTE OF LIMITATIONS ENACTED IN THE TRANSPORTATION ACT OF 1920 WAS RETROSPECTIVE IN ITS APPLICATION

The well-known rule of construction that all statutes are to be considered prospective unless language is express to the contrary (*Danzer* v. *Gulf & Ship Island Railroad,* 000 U. S. 000, decided June 8, 1925; *Fullerton Co.* v. *Northern Pacific,* 266 U. S. 435, 437) is inapplicable to the present controversy. Courts have never hesitated to give a retrospective effect to statutes of limitation when the time remaining to the plaintiff within which to bring the suit was reasonable.

"If no right is impaired or destroyed by giving a statute of limitation a retroactive effect, the reason of the rule upon which the plaintiff relies ceases, and the rule itself should also cease" (*Button* v. *Atchison, Topeka & Santa Fe,* 1 Fed. Rep. (2d) 709, 711).

That six months or one year was a reasonable time within which to bring the suit after the statute became effective is abundantly sustained by the great weight of authority.

United States v. *Morena,* 245 U. S. 392, 397.

Canadian Northern Railway v. *Eggen,* 252 U. S. 553, 562.

Saranac Land Co. v. *Comptroller of New York,* 177 U. S. 318, 323, 324.

Turner v. *New York,* 168 U. S. 90, 94.

Koshkonong v. *Burton,* 104 U. S. 668, 674, 675.

Schauble v. *Schulz,* 137 Fed. Rep. 389, 393.

McGahey v. *Virginia,* 135 U. S. 662, 705, 707.

In *Button* v. *Atchison, Topeka & Santa Fe,* 1 Fed. Rep. (2d) 709, 711, 712, paragraph (3) of Section 16 received the very careful and full consideration of the Circuit Court of Appeals for the Eighth Circuit, Circuit Judge Kenyon and District Judges Amidon and Scott concurring. Every possible phase and effect of the statute was considered. In giving the statute a retrospective application, and denying the right of the carrier to maintain the suit to recover charges claimed to be due from the shipper, the Court said:

> (3) At the time the federal statute took effect there remained eight months within which the plaintiff could have brought its action under that law. That was a reasonable time. The question therefore presented is: Did Congress intend to preserve the plaintiff's right by this legislation or to enlarge it? Was it the intent of the act to extend the period of limitation for the carrier for two years and four months? No such intent is expressed in the law, and there is no reason in justice for thus enlarging the plaintiff's right by construction.
>
> It is not a question of power, but of intent. It is settled beyond controversy that the legislature may apply a new statute of

limitations to existing rights and shorten the time for their enforcement.

* * * * *

(4) There is another ground upon which the case may be rested. Plaintiff's right of action is given by statute. It was not created for its entertainment but to protect the public against secret rebates and discriminations. It is not a right of contract or of property. The right, therefore, is at all times under the full control of the legislature. It may limit it in any way without impairing any constitutional right of the plaintiff.

* * * * *

The Supreme Court has frequently commented upon the hardship inflicted upon shippers by suits of this character. *Pittsburgh, etc., Ry. Co.* v. *Fitch*, 230 U. S. 317, 322; *Louisville, etc., Ry. Co.* v. *Maxwell*, 237 U. S. 94, 97. They are allowed not for the benefit of the carriers, but for the protection of the public. The short limit fixed by the act of 1920 has for its object the collusion of shippers.

* * * * *

The shipment was delivered by the plaintiff October 24, 1917. By the express language of the federal statute above quoted, that was the time when plaintiff's cause of action accrued. The claim was presented January 24, 1918. The present action was commenced September 10, 1920. By the express above quoted, plaintiff's right

of recovery was barred, and the decision of the trial court should be reversed.

In *Leach v. Powder River Live Stock Co.*, 132 Fed. Rep. 434, a statute of limitations of Nebraska reduced, in some instances to three months, the period within which an action may be commenced upon a judgment rendered without the State upon a cause of action accruing more than six years before the commencement of the action upon the judgment. Holding that the shortened limitation was intended to apply to actions upon existing judgments, and that the *three months* limitation was unreasonable and void, Circuit Judge Van Devanter (Circuit Judges Sanborn and Hook concurring) said:

> [illegible] time within which [illegible] limitation of [illegible] is considered, the question arises whether it is reasonable. No reported decision has come under our observation which sustains a like limitation. The following cases sustain limitations of unquestionably the periods named: *Terry v. Anderson*, 95 U. S. 628, nine and one-half months; *Evans v. Evans*, 102 U. S. 345, eight and one-half months; *Wheeler v. Jackson*, 137 U. S. 245, six months; *Pierce v. Two Feet*, 142 U. S. 90, six months; *Sloan v. Biemiller*, 31 Minn. 520, about nine and one-half months; *Bissell v. Hadley County*, 45 Minn. 174, six months; *Hamilton v. Brown*, 2 Dillon, 406, two months; *Smith v. Pinkard*, 15 Wis. 471, eight and

one-half months; *Cameron* v. *Louisville, etc., Ry. Co.,* 69 Miss. 78, one year; *Horbach* v. *Miller,* 4 Neb. 31, four and one-half months; *Myers* v. *Wheelock,* 60 Kan. 747, six months; *Power* v. *Kitching,* 10 N. D. 254, 86 N. W. 737, seven months. In *McGahey* v. *Virginia,* 135 U. S. 662, 708, a limitation of one year was declared unreasonable, and in *Berry* v. *Ransdall,* 4 Mete. (Ky.) 292, the same was said of a limitation of thirty days. In *Bank* v. *Braithwaite,* 7 N. D. 358, 372, it was doubted whether three and one-half months was a reasonable time, but thirteen months was pronounced reasonable. No useful purpose would be served by referring more particularly to the limitations which were sustained or rejected in these cases. It is sufficient to say that all of the cases recognize the true rule to be that a limitation is unreasonable which does not, before the bar takes effect, afford full opportunity for resort to the courts for the enforcement of the rights upon which the limitation is intended to operate, and that this opportunity must be afforded in respect to existing rights of action after they come within the present or prospective operation of the statute and in respect of prospective rights after they accrue.

IV

EVEN IF THE THREE-YEAR STATUTE OF LIMITATIONS AS ENACTED IN THE TRANSPORTATION ACT OF 1920 WAS INAPPLICABLE TO THIS CAUSE OF ACTION, THE AMENDMENT OF JUNE 7, 1924, OPERATED TO BAR THE CLAIM, EVEN THOUGH SUIT HAD BEEN INSTITUTED AND WAS PENDING

Assuming that the three-year statute of limitations enacted in 1920 is to be treated as prospective in the sense of applying only to causes of action accruing after its passage, it is then necessary to consider the effect of the amendment of June 7, 1924.

At the time of the passage of the Act of June 7, 1924, litigation over this statute had already occurred, and the differences of opinion respecting the application of the statute were no doubt called to the attention of Congress (*Louisville Cement Co.* v. *Commission*, 246 U. S. 638). The Act of June 7, 1924, reiterates the provision that actions at law by carriers for recovery of their charges shall be begun within three years from the time the cause of action accrues. Then follows subdivision (h), which is as follows (Ch. 325, 43 Stat. 633):

> The provisions of this paragraph (3) shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue, except that actions at law begun or complaints filed with the commission against carriers subject to this Act for the recovery of over-

> charges where the cause of action accrued on or after March 1, 1920, shall not be deemed to be barred under subdivision (c) if such actions shall have been begun or complaints filed prior to enactment of this paragraph or within six months thereafter.

By the express language of subdivision (h) the effect of the statute was to then bar causes of action not in suit which had accrued three years or more prior to the passage of the Act of June 7, 1924. It is evident that subdivision (h) made no change with respect to the statute of limitations applicable to causes of action accruing after the passage of the Transportation Act of 1920, because that statute admittedly applied a three-years statute of limitations to causes of action accruing after its passage. The retrospective operation of subdivision (h) was therefore limited to causes of action which had accrued prior to the passage of the Transportation Act of 1920. The sole and only purpose of subdivision (h), therefore, must have been to make it clear that the three-years statute of limitations applied to causes of action accruing prior to the Transportation Act of 1920 and to destroy them and prevent their prosecution, unless suit had theretofore been brought within three years from the time the cause of action had accrued. No other interpretation of the express language of subdivision (h) seems possible without distorting its terms or resorting to judicial legislation. There is nothing about the statute which shows

that there could have been any intent to discriminate in favor of claims where suit had already been commenced, although not brought within three years from the accrual of the cause of action, as against cases where more than three years had elapsed since the cause of action had accrued and on which suit had not yet been commenced.

If subdivision (h) of the Act of 1924 had stopped short after providing that the paragraph applied to cases where causes of action had theretofore accrued, it still might have been possible to construe the section as not applying to cases which had been commenced and were pending, although brought more than three years after the cause of action had accrued, but the exception contained in the last part of subdivision (h) seems to render this construction impossible. The exception provides that certain actions shall not be deemed barred—

> if such actions shall have been begun or complaints filed prior to enactment of this paragraph or within six months thereafter.

This exception seems to make it plain that subdivision (c), relating to suits or complaints for overcharges, would have operated to bar pending actions which had not been brought within three years of the time the cause of action accrued, if such action was not saved by the exception. It is true that this exception in subdivision (h) refers only to subdivision (c), which deals with

claims by shippers against carriers for overcharges; but if subdivision (c) construed in connection with subdivision (e) and the first part of subdivision (h) would have operated to bar causes of action, even though suits were then pending, it is impossible to see why subdivision (a), relating to suits by carriers, construed in connection with subdivision (e) and the first part of subdivision (h) would not have done likewise. The conclusion seems inevitable that Congress understood that, without a saving exception such as is contained in subdivision (h), the fact that a suit had already been commenced and was pending would not save the cause of action against the limitation prescribed.

The plain purpose of the Act was to make the limitation of three years apply to causes of action accrued prior to the passage of the 1920 Act; and to apply the new limitation to cases where suit had already been commenced when the 1924 Act was passed involves a result no more drastic than to apply it to cases where suit had not been commenced but a cause of action still existed, through the fact that the six-year statute of limitation had not run. It may be argued that this construction would result in the Act being declared unconstitutional and void as respects certain classes of cases within its terms. That may be admitted if the Act of 1924 is to be treated as effecting a change in the law and not as a declaration of the intent of the 1920 Act. The limitation is not

restricted in its application to suits against the Government. It applies to suits by carriers against private shippers. The same language can not mean one thing for the Government and another thing for private shippers. It has been held that the due process clause of the Fourteenth Amendment prevents a State from passing a statute of limitations abrogating existing causes of action without giving a reasonable opportunity to sue after the passage of the Act. The due process clause of the Fifth Amendment, operating on Congress, would seem to prevent Congress from passing a valid statute abrogating an existing cause of action in favor of a carrier against a private shipper without giving the carrier a reasonable opportunity to sue after the passage of the Act.

It may be argued that because the Act of 1924 would be inoperative and invalid as applied to cases where the defendant is a private shipper but in other respects like the present cases, Congress could not have intended to discriminate in favor of the Government; and if the Act is obnoxious to constitutional provisions as applied to cases like the present, involving private shippers, it should be considered inoperative as to any such case against the Government. On the other hand, it may be said that the United States may withhold its consent to be sued, and having once given its consent it may withdraw it; that as applied to these particular cases Congress had the right to

withdraw its consent to a suit against the United States, even though suit had been instituted; that as applied to these particular cases the Act is constitutional; and that the Court, in view of the express language and necessary implications to be drawn from the language of the statute, should enforce it in every case where it is not met with constitutional objections.

We have discussed the Act of June 7, 1924, on the theory that it changed the law. In this view it would undoubtedly be unconstitutional as applied to some cases involving private shippers. Such a result should be avoided if possible. *It may be avoided* by construing the 1920 Act as applying to causes of action accruing prior to its passage, making the time run either from the accrual or from the passage of the Act of 1920, and thus accepting the Act of 1924, not as affecting a change in the law but as declaratory of the purpose of the earlier Act. The amendment of June 7, 1924, fastens paragraph (3) upon the cause of action of appellant beyond any doubt, whether the cause of action arose in August, 1917, when the freight was delivered, or in March, 1918, when the deduction was made (*Louisville Cement Co.* v. *Commission*, 246 U. S. 638).

In *Jordan v. Roche*, 228 U. S. 436, 446, it was held that the Act of February 4, 1909 (Ch. 65, 35 Stat. 594), was unnecessary for the purpose of subjecting bay rum imported from Porto Rico to the tax imposed upon distilled spirits, inasmuch as the bay

rum was taxable under the Foraker Act of April 12, 1900 (Ch. 191, 31 Stat. 77). Speaking of the later Act, Mr. Justice McKenna said: "The law was not the declaration of a new policy but a more explicit expression of the purpose of the prior law, made necessary by the judicial construction of that law."

V

IF THE THREE YEAR LIMITATION ENACTED IN THE TRANSPORTATION ACT OF 1920 IS TO BE TREATED AS PROSPECTIVE, IT NEED NOT BE LIMITED IN ITS APPLICATION TO CAUSES OF ACTION ACCRUING AFTER ITS PASSAGE, BUT MAY BE HELD TO ALLOW THREE YEARS AFTER ITS PASSAGE WITHIN WHICH TO COMMENCE SUITS ON CAUSES OF ACTION THERETOFORE ACCRUING

Assuming that the Act of 1920 is to be given a prospective operation, the question arises as to what form this operation will take. In dealing with this subject in *Sohn* v. *Waterson,* 17 Wall. 596, 599, Mr. Justice Bradley said:

> To avoid such a result and to give the statute a construction that will enable it to stand, courts have given it a prospective operation. In doing this, three different modes have been adopted by different courts. One is to make the statute apply only to causes of action arising after its passage. But as this construction leaves all actions existing at the passage of the act without any limitation at all (which, it is presumed, could not have been intended), another rule adopted is to construe the statute as applying to such existing actions only as have already run out a portion of the statutory

time, but which still have a reasonable time left for prosecution before the statutory time expires—which reasonable time is to be estimated by the court—leaving all other actions accruing prior to the statute unaffected by it. The latter rule does not seem to be founded on any better principle than the former. It still leaves a large class of actions entirely unprovided with any limitation whatever, or, as to them, is unconstitutional, and is a more arbitrary rule than the first. A third construction is that which was adopted by the court below in this case, and which we regard as much more sound than either of the others. It was substantially adopted by this court in the cases of *Ross* v. *Duval* (13 Pet. 62) and *Lewis* v. *Lewis* (7 How. 778). In those cases certain statutes of limitation—one in Virginia and the other in Illinois—had originally excepted from their operation nonresidents of the State, but this exception had been afterwards repealed, and this court held that the nonresident parties had the full statutory time to bring their actions after the repealing acts were passed, although such actions may have accrued at an earlier period. "The question is," says C. J. Taney (speaking in the latter of the cases just cited), "from what time is this limitation to be calculated? Upon principle it would seem to be clear that it must commence when the cause of action is first subjected to the operation of the statute, unless the legis-

lature has otherwise provided." It is true that in the subsequent case of *Murray* v. *Gibson* (15 Id. 421), this court followed the decisions of the Supreme Court of Mississippi in its construction of a statute of that State and held that it applied only to actions accruing after the statute was passed. But that decision was made in express deference to those of the State court, which were regarded as authoritative. In the present case we are not bound by any decisive construction of the State court on this point.

In dealing with this statute in *Schaff, Receiver of the Missouri, Kansas & Texas Ry. Co. of Texas,* v. *The United States,* 59 Ct. Cls. 318, the court adopted that solution which results in allowing three years after the passage of the Act to bring suit on causes of action accruing prior to its passage. It may be that some of the considerations which induced the Court in *Sohn* v. *Waterson* to adopt this solution of a prospective operation for the statute do not exist in this case, because making the statute apply only to causes of action accruing after its passage does not leave a cause of action accruing prior to its passage without any limitation at all, as the general six-year statute would apply to all causes not covered by the three-year statute. That Congress intended, however, that the three-year statute adopted in the Transportation Act of 1920 should

be applicable to causes of action already accrued, to the extent at least of limiting the time for commencing suit to a period of three years after the passage of the statute, is indicated by the purpose of the statute, which was to produce uniformity and reduce the time within which such suits might be commenced.

The amendment of June 7, 1924, hereinbefore more fully discussed, should be treated not as effecting a change in the law but as a declaration of the purpose of Congress to make the Act of 1920 apply to causes of action accruing prior to the passage of the 1920 Act to the extent at least of placing on them a limitation of three years from the passage of the Act of 1920. *Any other interpretation of the Act of 1920 results in giving an effect to the Act of 1924 which in some cases involving private shippers would render the Act of 1924 unconstitutional.*

VI

CONCLUSION

It must be concluded, therefore, that the three-year statute of limitations contained in the Transportation Act applies as well in favor of the Government as in favor of private shippers; that the limitation first applied in the Transportation Act of 1920 may properly be applied to causes of action accruing prior to its passage, where, as in this case, a reasonable time remained after the passage of the Act within which to commence

suit; that if the Act of 1920 must be treated as prospective in its application, a construction making it applicable to causes of action accruing prior to its passage, but allowing three years after its passage within which to bring suit, is sustained by the authorities and consistent with the purpose of the Act; and, finally, in the event that legislation prior to June 7, 1924, did not bar this claim, the amendment of that date, expressly retrospective in its operation and evidently intended to apply to claims involving pending actions as well as to those in which no suit has been commenced, operates to bar the claim.

The judgment of the Court of Claims should be reversed and the cause remanded with directions to dismiss the petition.

WILLIAM D. MITCHELL,
Solicitor General.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

OCTOBER, 1925.

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 91

UNITED STATES, APPELLANT

v.

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY

No. 92

UNITED STATES, APPELLANT

v.

WABASH RAILWAY COMPANY

APPEALS FROM THE COURT OF CLAIMS

REPLY BRIEF FOR THE UNITED STATES

No. 91

Opposing counsel argue that paragraph (3) of Section 16 does not apply at all to claims presented to the Court of Claims (Br. 4), as "A claim presented to the Court of Claims is not 'an action at law'" (Br. 8).

The argument appears to be that the Court of Claims is not a tribunal in which justiciable issues are heard and determined. It should be noted that the learned counsel make no reference whatever to actions in the District Courts when the jurisdictional amount is present. We are not informed as to whether they consider the District Courts are in the same category as that in which they seek to place the Court of Claims.

As *amici curiae,* counsel for the Southern Pacific and other railroad companies have filed a brief in which they argue that the three-year limitation prescribed by the Transportation Act of 1920 should be construed as eliminating the Government as a shipper from its provisions entirely; for, they say, the statute applies " only to suits of that character in the ordinary courts of law against private shippers, and does not apply to claims filed by such carriers in the Court of Claims on account of transportation services rendered the United States " (Br. 5).

In *United States* v. *Klein,* 13 Wall. 128, 144, 145, Mr. Chief Justice Chase said: " Since then the Court of Claims has exercised all the functions of a court, and this court has taken full jurisdiction on appeal. The Court of Claims is thus constituted one of those inferior courts which Congress authorizes and has jurisdiction of contracts between the Government and the citizen, from which appeal regularly lies to this court."

In *Great Falls Manufacturing Co.* v. *Attorney General,* 124 U. S. 581, 598, it was argued that the Court of Claims is a court unknown to the Constistitution, being neither a court of equity such as was known at the adoption of that instrument nor a court of law proceeding according to the rules of the common law, but only a board of referees, constituted by one party to hear such cases as another party will consent to submit to its determination, and without power to enforce its judgment against the party by whom it is created; and that it directs property to be taken and the owner thereof dispossessed without making provision for just compensation. In holding against the argument thus made, Mr. Justice Harlan, speaking for this Court, said:

"Congress prescribed a particular mode for ascertaining the compensation which claimants of property taken for the purposes indicated in the Act of 1882 were entitled to receive. It gave them liberty to proceed by suit against the United States before a designated tribunal, which, since the passage of the act of March 17, 1866, 14 Stat. 9, has exercised 'all the functions of a court,' from whose judgment appeals regularly lie to this court. *United States* v. *Klein,* 13 Wall. 128, 145; *United States* v. *Jones,* 119 U. S. 477; *Gordon* v. *United States,* 117 U. S. 697."

The action was brought to recover charges for transportation. The words "actions at law" are all-embracing; and if the statute is binding in fixing the *jurisdiction* of all courts throughout the

United States, both Federal and State, there is no sound reason for reading into the statute the words "except actions against the United States."

In many of the States which have adopted codes the common law and chancery jurisdictions have been abolished and all actions are commenced by the filing of a complaint or petition substantially in the form prescribed for the Court of Claims. It would not seriously be contended that because in such States the technical forms of actions at law and suits in chancery have been abolished the Transportation Act of 1920 would not apply but that the separate statutes of limitations of the respective States still remain in force.

Congress deliberately adopted the words "all actions at law" for the purpose of reaching every action which may be brought in any court for the purpose of collecting the charge. The mere fact that the Government consented to be sued in such a manner does not exclude it from the statute.

In *McAndrews* v. *Chicago, etc., Railway Co.*, 162 Fed. Rep. 856, 858, Circuit Judge Grosscup (Circuit Judges Baker and Seaman concurring) said: "An 'action' is the means that the law has provided to put the cause of action into effect."

No. 92

Opposing counsel argues (Br. 3) "even if such limitation does apply to such claims, it has no bearing on this case, which is founded upon an *appropriation* of so much of plaintiff's money, which

appropriation can be defended only upon the basis of its propriety," and "In their brief filed in this case Government counsel seem to have overlooked it altogether." Again he says (Br. 14), "We consider it conclusive of the case, regardless of the application of the 3-years limitations." On page 15 counsel again refers to "a suit for the money erroneously *appropriated*" (italics ours).

The Court of Claims said (R. 10):

> At any rate the deductions were made within six years prior to the beginning of this suit. Plainly the plaintiff's cause of action did not arise until deductions were made from its subsequent bills. Its prior bills had been paid in full. Properly speaking, its right of action is based upon or because of these deductions, and this is not barred by the statute of six years, the suit having been duly instituted within that time.

Wabash Railway alleged (R. 5) that "The reasons assigned for the original deduction and for the subsequent disallowance of petitioner's supplemental bill were violative both of the lawful method of constructing through fares and of the terms of said military agreements." This would indicate the carrier was seeking to establish a contract between it and the War Department for the carriage of the military impedimenta at the regularly published tariff rates less certain agreed deductions.

If, as opposing counsel now seems to argue, the action of Wabash Railway is not based on the

agreement and tariffs, but is an action "which is founded upon an *appropriation* of so much of plaintiff's money, which *appropriation* can be defended only upon the basis of its propriety" (italics ours) (Br. 3), then there is no contract.

Opposing counsel further argues (Br. 11), "There can be no doubt that this suit, whether based upon an unpaid part of a transportation claim, *or upon the promise implied by the Constitution and the law of the land* to make plaintiff whole if the withholding of its money in the course of payment of the later bill be erroneous, is a suit based upon a contract" (italics ours). If this is an action to recover tariff charges for transportation, it is barred by paragraph (3) of Section 16; if it is an action to recover on "the promise implied by the Constitution and the law of the land to make plaintiff whole," there is no contract, the Court of Claims was without jurisdiction, and its judgment is void. *Pearson* v. *United States,* 267 U. S. 423; *Klebe* v. *United States,* 263 U. S. 188, 191.

WILLIAM D. MITCHELL,
Solicitor General.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

NOVEMBER, 1925.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

No. 91.

THE UNITED STATES, *Appellant*,

vs.

ST. LOUIS, SAN FRANCISCO & TEXAS RY. CO.

No. 92.

THE UNITED STATES, *Appellant*,

vs.

WABASH RAILWAY COMPANY.

Appeals from the United States Court of Claims.

BRIEF UPON THE APPLICATION OF THE THREE-YEAR LIMITATION IN THE INTERSTATE COMMERCE ACT, WITH RESPECT TO THE INSTITUTION OF ACTIONS AT LAW BY CARRIERS FOR THE RECOVERY OF THEIR CHARGES, TO CLAIMS OF RAILROAD COMPANIES AGAINST THE UNITED STATES IN THE COURT OF CLAIMS GROWING OUT OF THEIR CHARGES FOR GOVERNMENT TRANSPORTATION.

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Attorneys, as Amici Curiae.

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WABASH RAILWAY COMPANY.

Appeals from the United States Court of Claims.

BRIEF, AS AMICI CURIAE.

Statement.

The writers of this brief represent the Southern Pacific and other railroad companies, which companies have a number of cases pending in the Court of Claims involving the issue raised by the Government in the above appeals as to whether the three-year limitation in the Interstate Commerce Act (as amended by the Transportation Act of February 28, 1920, and an Act approved June 7, 1924), with respect to the institution of "actions at law" by carriers subject to said Act for the recovery of their charges, applies to claims against the United States of railroad companies in the Court of Claims growing out of their charges for

Government transportation, in view of the general limitation of six years fixed by the Judicial Code with respect to proceedings in the Court of Claims.

In certain prior decisions the Court of Claims held that said three-year limitation in the Interstate Commerce Act did apply, under certain circumstances, to proceedings in that court by railroad companies for the establishment of claims against the United States growing out of transportation services rendered the Government, and it reasserted that view in the two cases now on appeal to this court in which this brief is being filed, although it did not actually apply said statute, its failure to do so, under the circumstances disclosed by its findings of fact in these cases, being alleged as error by counsel for the Government.

This brief will be confined entirely to a discussion of the question whether said three-year limitation in the Interstate Commerce Act was intended to apply *at all* to proceedings of the character stated by railroad companies in the Court of Claims, it being the contention of the writers of this brief that it does not apply to such proceedings under any circumstances.

THE LAW.

By the Transportation Act of 1920 (41 Stat., 491, 492), Section 16 of the Interstate Commerce Act was amended by the addition of the following paragraph (Italics ours):

> "(3) *All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.* All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, unless the carrier, after the expiration of such two years or within ninety days before such expiration, begins an action for recovery of charges in respect of the same service, in

which case such period of two years shall be extended to and including ninety days from the time such action by the carrier is begun. *In either case the cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.* A petition for the enforcement of an order for the payment of money shall be filed in the district court or State court within one year from the date of the order, and not after."

The above statute was amended (but not materially changed, so far as the question under consideration here is concerned) by the Act approved June 7, 1924, chap. 325 (43 Stat. 633) and now reads as follows (Italics ours):

"(3) (a) *All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.*

(b) All complaints against carriers subject to this Act for the recovery of damages not based on overcharges shall be filed with the commission within two years from the time the cause of action accrues, and not after, subject to subdivision (d).

"(c) For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers subject to this Act within three years from the time the cause of action accrues, and not after, subject to subdivision (d), except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

"(d) If on or before expiration of the two-year period of limitation in subdivision (b) or of the three-year period of limitation in subdivision (c) a carrier subject to this Act begins action under subdivision (a) for recovery of charges in respect of the same transportation service, or, without beginning action, collects

charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

"(e) *The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.*

"(f) A petition for the enforcement of an order of the commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

"(g) The term 'overcharges' as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the commission.

"(h) *The provisions of this paragraph* (3) *shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue,* except that actons at law begun or complaints filed with the Commission against carriers subject to this Act for the recovery of overcharges where the cause of action accrued on or after March 1, 1920, shall not be deemed to be barred under subdivision (c) if such actions shall have been begun or complaints filed prior to enactment of this paragraph or within six months thereafter."

ARGUMENT.

I.

The Three-Year Limitation in the Interstate Commerce Act Added by the Transportation Act of 1920, With Respect to "Actions at Law" by Carriers for Recovery of Their Charges, Applies Only to Suits of That Character in the Ordinary Courts of Law Against Private Shippers, and Does Not Apply to Claims Filed by Such Carriers in the Court of Claims on Account of Transportation Services Rendered the United States.

The correctness of the above proposition is apparent from—

(1) The language of said provision of the Interstate Commerce Act.

(2) The purpose for which said three-year limitation was enacted, as disclosed in the Interstate Commerce Act.

(3) The long-established relations between the railroads and the United States with respect to Government transportation at the time of the passage of the Transportation Act, and which were recognized and confirmed thereby.

(4) The fact that a proceeding in the Court of Claims is *sui generis* and a matter of express regulation by Congress.

We shall consider first the legislation of Congress with respect to the jurisdiction of the Court of Claims.

Section 145 of the Judicial Code provides that the Court of Claims shall have jurisdiction to determine, among other things (Italics ours)—

> "First. All *claims* (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with

> the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty, if the United States were suable: * * *"

Section 156 of the Judicial Code (36 Stat. 1139) provides (italics ours):

> "Every *claim* against the United States cognizable by the Court of Claims, shall be forever barred unless *the petition setting forth a statement thereof* is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the *claim* first accrues: * * *"

Notwithstanding these express provisions with reference to the jurisdiction of the Court of Claims, and that *six years* is authorized by said statutes for the filing of "*every claim* against the United States cognizable by the Court of Claims," the Court of Claims has ruled that *a petition by a railroad company in that court for the establishment of a claim against the United States* growing out of the transportation of persons or property for the Government, is an "action at law" within the meaning of the aforesaid amendment to the Interstate Commerce Act made by the Transportation Act of 1920, and is barred unless brought within three years from the time such transportation service was performed.

A careful analysis, however, of said provision of the Transportation Act of 1920 will show that such was not the intention of Congress.

In order to understand the scope of said provision of the Transportation Act of 1920 with respect to "actions at law" by carriers for the collection of their charges, it is necessary to consider the objects sought to be attained by Congress in the Act to Regulate Commerce.

As this court has said, the Interstate Commerce Act, in addition to assuring just and reasonable charges for transportation, is intended, among other things, "to prohibit unjust discriminations in the rendition of like services under similar circumstances and conditions; to prevent undue or unreasonable preferences to persons, corporations or localities." (*Interstate Commerce Commission v. Baltimore & Ohio R. R. Co.*, 145 U. S. 263.)

The discriminations and preferences to which the Interstate Commerce Act is directed, however, *have reference entirely to discriminations and preferences with respect to private individuals, natural or corporate*, as the Act does not inhibit discriminations and preferences with respect to Governmental agencies, Federal or State. On the contrary, Congress provided, in Section 22 of the Act as originally passed—

> "That nothing in this Act shall prevent the carriage, storage or handling of property free or at reduced rates for the United States, State, or municipal governments."

So also, in the Transportation Act of 1920, in amending Section 3 of the Interstate Commerce Act (which, as originally enacted, made it unlawful for any common carrier to give undue or unreasonable preference to any person, company, firm, corporation or locality, etc.,) by providing that (Italics ours)—

> "(2) From and after July 1, 1920, no carrier by railroad subject to the provisions of this Act shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe *to assure prompt payment of all such rates and charges and to prevent unjust discrimination*"—

Congress was careful to add thereto the following proviso (Italics ours):

"*Provided,* That the provisions of this paragraph *shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States,* for any department, bureau, or agency thereof, or for any State or Territory or political subdivision thereof, or for the District of Columbia."

This proviso was added because, at the time of the passage of the Transportation Act of 1920, and long prior thereto, it had been the *authorized and required* practice of common carriers by railroad to transport persons and property for the Government of the United States without requiring prepayment of their charges for the persons transported or payment upon delivery for property transported; persons being transported upon Government transportation requests issued by the various departments of the Government, and property being transported upon Government forms of bills-of-lading prescribed by the Comptroller of the Treasury and approved by the Secretary of the Treasury, pursuant to law (14 Comp. Dec. 967, *et seq.*); payment for such transportation being subsequently made by the Government upon the presentation by the carriers of their bills for the charges therefor accompanied by the Government transportation requests or the accomplished bills-of-lading, such payment being made as the convenience of the Government system of auditing and disbursement, and other exigencies, required.

Thus, the form of Government bill of lading prescribed by the Comptroller of the Treasury and approved by the Secretary of the Treasury, as aforesaid, contains the following, among other conditions (14 Comp. Dec. 971):

"It is mutually agreed and understood between the United States and carriers who are parties to this bill of lading that—

"1. Prepayment of freight charges will in no case be demanded by carriers. Upon surrender of this bill of lading duly accomplished payment will be made to

the last carrier, except where otherwise specifically stipulated."

Said form of Government bill of lading also contains the following, among other instructions (*Ib.* p. 971):

> "8. Only one copy of a bill of lading will be issued for a single shipment. This bill, when receipted by the agent of the receiving carrier, will be returned to the consignor and by him mailed to the consignee, who will, upon receipt of the shipment, accomplish and surrender the bill to the last carrier. This bill then becomes the evidence upon which settlement for the service will be made."

It will be noted that *it is the duty of the Government agent named as consignee in the Government bill of lading to accomplish the same and surrender it to the last carrier,* and that said accomplished bill of lading must then be presented to the Government disbursing officer by the last carrier in support of its claim for the entire transportation charges. In practice, the accomplishment and surrender of the bill of lading by the Government agent to the last carrier often takes months, and even years. Sometimes the bill of lading is lost through the negligence of the agents of the Government, in which event it becomes necessary for the last carrier to obtain a certificate in lieu thereof, as provided in paragraph 11 of the instructions on the reverse side of the Government form of bill of lading (*ib.* 971), before it can demand payment for the transportation covered thereby of the Government. *Manifestly, therefore, no cause of action against the Government accrues upon a shipment of property for the United States until the bill of lading is accomplished and presented by the last carrier to the proper disbursing officer of the Government, with a demand for payment, and payment is refused,* (or a certificate in lieu of said accomplished bill of lading is presented with the demand for payment, and payment is refused.)

Bearing these facts in mind, it is at once apparent that,

in amending Section 16 of the Interstate Commerce Act so as to provide (paragraph 3) that "all *actions at law* by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years *from the time the cause of action accrues, and not after,*" and further providing that "the cause of action in respect of a shipment of property shall, for the purposes of this *section,* be deemed to accrue *upon delivery or tender of delivery thereof by the carrier, and not after,*" Congress could not have intended to include in said limitation proceedings by said carriers against the United States in the Court of Claims for the establishment of any amount or balance claimed to be due the carriers on account of transportation services rendered the Government, *because so to hold would be to make the three-year statute of limitations provided by the Transportation Act run against a carrier during the period of credit expressly authorized by the Transportation Act, and required by the bill of lading, to be extended to the Government.*

The purposes of Congress in providing that the three-year period in which carriers should institute "actions at law" for the recovery of their charges *should begin to run from the time of the delivery of the shipment or tender thereof,* were manifestly the same as those which caused it to provide that, from and after July 1, 1920, no carrier by railroad subject to the Interstate Commerce Act should deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges have been paid, except under such rules and regulations as the Commission may from time to time adopt *to assure prompt payment and to prevent unjust discrimination;* that is to say, Congress regarded the extension of credit by said carriers *to private shippers,* whether individual or corporate, as amounting to a preference to the favored shipper and an unjust discrimination against other shippers not so favored. But the United States, as well as other Governmental bodies and agencies, did not come within this policy of

Congress, and therefore Congress expressly authorized the extension of credit to such bodies or agencies.

And as, under the Government system of accounting, the settlement of the carrier's bill or voucher (the forms for which are also prescribed by Government regulation, 14 Comp. Dec. 977-978) is not a matter of immediate adjustment, but may involve delays running into months and years, during which credit is necessarily required to be extended by the carrier to the Government, the injustice of adopting an interpretation of the provision of the Transportation Act of 1920 under consideration which would require it to be held that the carrier's right to recover its charges for Government transportation (by suit in the Court of Claims) accrued upon delivery of the shipment, or tender thereof, is all the more apparent.

We submit that this analysis of the Transportation Act of 1920 makes it perfectly clear that Congress did not intend to include suits against the United States in the Court of Claims by carriers by railroad subject to the Interstate Commerce Act within the three-year limitation imposed by the Transportation Act of 1920 upon "actions at law" generally by such carriers for the collection of their charges.

That the purpose of Congress is to be considered and all the provisions of the Transportation Act of 1920 to be examined for the purpose of determining the correct construction of the three-year statute of limitations provided thereby is obvious.

In *Dupont De Nemours & Co. v. Davis*, 264 U. S. 456, upon a full consideration of the statute, it was held that the Director General of Railroads was not a "carrier" within the meaning of the three-year limitation in the Transportation Act as to actions at law by carrier subject to the Act to Regulate Commerce, although paragraph (3) of Section 1 of said Act provides that the term "common carrier" as used therein shall include "all persons, natural or artificial, engaged in such transportation or transmission as common carriers for hire."

This court, in that case, pointed out that Congress had dealt with the subject of Federal control of railroads in a separate Title of the Transportation Act, and said that, "if Congress had intended to fix a period of limitation applicable to actions, suits or proceedings brought in behalf of the United States in respect of liabilities arising out of Federal control, we should naturally expect to find it in Title II, where such matters are exclusively dealt with, and not in Title IV, which deals with common carriers entirely apart from such control." (*Ib.* p. 461.)

So here, since Congress has, by special statute, expressly regulated the subject of proceedings against the United States in the Court of Claims, and provided the same period of limitation (six years) with respect to *every* claim against the United States in that court, it is not to be presumed, *in the absence of clear and convincing reasons to the contrary*, that Congress intended, by the provision in the Transportation Act of 1920 referred to (which deals with another and very distinct subject-matter) to reduce said six-year period of limitation to *three* years so far as concerns proceedings by railroad companies in the Court of Claims, and leave to all other claimants against the United States in the Court of Claims a period of *six* years in which to bring their suits.

As above shown, no such clear and convincing reasons exist for such a construction of said provision of the Transportation Act of 1920, but, on the contrary, considering the purpose of Congress, as set forth in that Act and in the Interstate Commerce Act as a whole, proceedings by the railroads in the Court of Claims to establish claims against the United States growing out of their charges for Government transportation, do not come within the purpose of Congress as exemplified in said Interstate Commerce Act, which, as above stated, was to prevent such carriers from unjustly discriminating in their rates and charges between private shippers.

II.

The Three-Year Limitation in the Interstate Commerce Act Does Not Cover, Even in Terms, Petitions by Carriers in the Court of Claims.

Aside from what has been said above as to the manifest purpose of Congress in providing, in the Transportation Act, said three-year limitation with respect to "actions at law" by carriers for the collection of their charges, it is to be observed that the language used in said provision is not such as would ordinarily be employed to cover proceedings in the Court of Claims. The expression "*actions at law*" is not an apt one to use with respect to a petition in the Court of Claims for the establishment of a "claim" against the United States. Such a proceeding is *sui generis*. It is a privilege granted by the Government by *special statute* to be exercised in accordance with the restrictions contained in said statute, and not otherwise.

The Act establishing and defining the jurisdiction of the Court of Claims refers to "*claims*" against the United States, not "*causes of action*," and draws a distinction between a proceeding in that court and a suit in "a *court of law*, equity, or admiralty." (See Sec. 145, subdivision "First", Judicial Code, above quoted.)

So also, in fixing the period of limitation as to proceedings in the Court of Claims, Congress provided that "every *claim*" (not "*cause of action*") should be barred unless "the *petition* setting forth a statement thereof" (not "*action*" or "*suit*") is filed "within six years after the *claim* first accrues." (See Sec. 156, Judicial Code, *supra*.)

In brief, a petition in the Court of Claims is not an "action at law" to enforce a legal right against the United States, but merely a proceeding to establish a "claim" against the Government as a foundation for an appropriation by Congress, which appropriation, while usually made as a matter of course, may nevertheless be withheld.

We submit, therefore, that claims of railroad companies

against the United States in the Court of Claims on account of Government transportation do not come within either the letter or the spirit of the three-year limitation in the Interstate Commerce Act with respect to actions at law by carriers for the collection of their charges; and, furthermore, that to extend said limitation to such claims would defeat the expressed purpose of Congress in regard to the extension of credit to the United States for Government transportation and interfere with the long-established and required practice in that regard.

III.

In Passing Upon the Scope of the Three-Year Limitation in the Interstate Commerce Act with Respect to "Actions at Law" by Carriers for the Collection of Their Charges, the Court of Claims Failed to Give Due Consideration to the Purpose of Congress in Enacting Such Provision, and Also Failed to Consider the Established Policy of Congress with Respect to Transportation Services Rendered by Such Carriers for the Government.

An examination of the several decisions of the Court of Claims in which it has announced (although only in one instance applied) the view that the three-year statute of limitations in the Transportation Act applies to suits by railroad companies against the Government in the Court of Claims based upon the transportation of persons and property for the Government, shows that said court reached its said conclusion without any careful analysis of this and other provisions of the Transportation Act of 1920 or a consideration of the purpose of Congress in the Interstate Commerce Act as a whole. This failure of the Court of claims was probably due to the fact that the court, in the case in which this conclusion was first announced, was not really called upon to construe and apply said provision. The case referred to is *Western Pacific Railroad Company v. The United States* (59 C. Cls. 67), decided January 7,

1924. We quote in full the remarks of the Court of Claims on the question we are here considering (*ib.*, p. 81):

> "*While the foregoing would dispose of the plaintiff's case,* a statute is called to our attention that should receive consideration. This is section 424 of the Transportation Act of 1920, amending section 16 of the Interstate Commerce Act. See 41 Stat. 491. Manifestly a large part of plaintiff's asserted claim is barred by the statute of limitations of six years, suit not having been brought until February 2, 1921. The Government contends in cases similar to this that the limitation statute in the Trasportation Act of 1920 is applicable. It provides that: '(3) All actions at law by carriers subject to this act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.' *The language is inclusive of the kind of actions brought by plaintiff.* It is seeking to recover its published tariff rates as applicable to certain Government employees less the amounts which it claims to have received as part payment only of its bills. Prescribing a statutory limitation of actions different from the general statute applicable to suits in the Court of Claims is not without precedent. To illustrate: Suits to recover taxes erroneously or illegally collected may be brought, but the limitation of actions is less than six years. (Rev. Stat. sec. 3227.) [*] The remedial purposes of the prescribed limitation of actions by transportation companies can very well extend to suits against the Government if suits like the instant one can be maintained at all. The Interstate Commerce Act, 24 Stat. 379, 387, limits the application of the Act as regards handling property of the United States, but the limitation of actions provided by the late statute does not, in terms at least, except suits against the Government by railroad companies. See

*This court's attention is called to the fact that Sec. 3227, Rev. Stat. U. S., referred to by the Court of Claims, is much more comprehensive in its terms than the statute under consideration: "No suit *or proceeding* for the recovery of any internal tax alleged to have been collected without authority," etc., "shall be maintained *in any court*, unless the same is brought within two years next after the cause of action accrued." Besides, a proceeding in the Court of Claims to recover any such tax comes within the purpose of this inhibition as much as a suit in any other court.

United States v. Baltimore & Ohio R. R. Co., 80 I. C. C. 143."[†]

It appears from the opinion in said case of the Western Pacific Railroad Company that the Court of Claims based its conclusion that the three-year limitation in the Transportation Act of 1920 applied to proceedings by carriers subject to the Act in that court entirely upon the language of said provision of the Transportation Act, which it thought "inclusive of the kind of actions brought by plaintiff," without either carefully considering the term "*actions at law*," used therein, or the purpose of Congress in enacting said provision, or the policy of Congress with respect to Government transportation as elsewhere expressed in the Interstate Commerce Act as so amended.

It is true that the Court of Claims said, in that opinion, that "the remedial purposes of the prescribed limitation of actions by transportation companies can very well be extended to suits against the companies," but it failed to analyze the pertinent provisions of the Act to Regulate Commerce as amended by said Transportation Act for the purpose of determining what such "remedial purposes" were.

So, in *Missouri, Kansas & Texas Ry. Co. v. United States*, 59 C. Cls. 318 (decided March 3, 1924), the court said, at pages 321-322:

> "The only defense attempted to be interposed in this case is the statute of limitations of three years contained in the Transportation Act of February 28, 1920, 41 Stat. 492. Unless that limitation applies the plaintiff is clearly entitled to a judgment. We have indicated in former opinions that the statute does apply to suits by carriers against the Government, *but it has*

†This reference of the Court of Claims may be misleading, because the case cited was not a proceeding by a railroad company against the United States for the collection of its charges, but a reparation proceeding before the Interstate Commerce Commission brought by the United States against the Director General of Railroads as agent for the Baltimore & Ohio Railroad Company. In a proceeding for reparation before said Commission the United States stands in the same position as any other shipper, although whether it should be held included in the statute of limitations governing such complaint, even if not specifically excepted, is another question.

not been necessary in these former cases to apply the statute. Expressions in some of these cases may be responsible for the contention here made that the plaintiff's cause of action accrued more than three years before suit was brought. But the rule is well settled, and is stated in *Sohn v. Waterson*, 17 Wall, 596. The statute of limitations prescribed by the Transportation Act of 1920 applies to actions brought against the Government by a carrier to recover its charges, but it does not defeat causes of action which arose before its passage if suit be brought within three years after the passage of the act and within six years from the accrual of the right of action. In other words, the general statute of limitations of six years applicable to suits in the Court of Claims, being jurisdictional, applies to all actions unless waived by statutory enactment relative to the particular case, and the limitation of three years prescribed by the Transportation Act may apply as above stated. But when suit is brought on a cause of action arising before the late statute, and this statute is alone relied upon, the limitation it prescribes begins to run from the date of the enactment of the statute. *Sohn v. Waterson, supra.* The plaintiff is entitled to a judgment in the sum of $21,946.69. And it is so ordered."

Here, again, the Court of Claims merely expressed the opinion that the three-year period of limitation prescribed by the Transportation Act of 1920 applied, under certain circumstances, to proceedings by the railroads in the Court of Claims, without any apparent consideration of the purposes of the statute.

So, in the case of *Wabash Railway Company v. United States*, 59 C. Cls. 322, decided March 3, 1924 (now on appeal to this court and one of the cases in which this brief is being filed), the Court of Claims merely assumed that the three-year period of limitation in the Transportation Act of 1920 would apply to suits by a railroad company in the Court of Claims arising out of transportation services rendered the Government, but held that said statute was inap-

plicable to the case before it because, as it said, such statute "does not begin to run against claims which arose before its enactment until the date of the passage of the act." It therefore gave judgment for the plaintiff for the amount claimed.

So, also, in *St. Louis, San Francisco & Texas Ry. Co. v. United States*, (the other case on appeal to this court in which this brief is being filed), the court gave judgment for the plaintiff, merely referring, in the memorandum accompanying said judgment, to the cases of *Schaff, Receiver of the Missouri, Kansas & Texas Ry. Co.* 59 C. Cls. 318, and the *Wabash Railway Co.*, 59 C. Cls. 322, *supra.*

In all of the above cases, it will be noted, including the two now pending on appeal in this court, the Court of Claims, while intimating that it thought (without, we submit, any careful consideration of the matter or any analysis of the statute), that the three-year statute of limitations in the Transportation Act of 1920 applied to suits by common carriers in the Court of Claims, nevertheless held in the particular instance that said three-year statute of limitations was not applicable.

In only one instance, so far as we are aware, has the Court of Claims actually applied the three-year statute of limitations and that was in the case of *Lancaster & Wallace, Receivers of the Texas & Pacific Railway* (C. Cls. No. C-112 on the docket of that court), decided by the Court of Claims on December 1, 1924, in which case the Court of Claims as to one item held, in a memorandum opinion (not yet reported):

> "(3) The defendant contends that one item of the claim, bill T-1505, is barred by the statute of limitations of three years imposed by section 424 of the Transportation Act of February 28, 1920, 41 Stat. 491-492. The transportation for which claim was made by this bill was rendered March 22, 1917, this suit was brought March 21, 1923, and this court has held that the provision of the Transportation Act relied on

applies, and the item of $4,701.20 is barred. *Schaff, Receiver of the Missouri, Kansas & Texas Railway Company of Texas, v. The United States,* No. 241-A, 59 C. Cls—. The rule of the Atchison, Topeka & Santa Fe case, 58 C. Cls. 583, as to laches, is not applicable here."

Here, again, it will be seen that the Court of Claims merely relied upon its former observation in the Schaff case without any greater consideration of the provisions of the Transportation Act of 1920 or of the purpose of Congress in enacting the three-year limitation contained therein.

In short, it appears that the Court of Claims has undertaken to hold that its jurisdiction has been abridged, so far as concerns suits by railroad companies in said court arising out of transportation services for the Government, without any inquiry as to the purpose of Congress in enacting the three-year limitation in the Transportation Act of 1920 with respect to "actions" at law by carriers subject to the Interstate Commerce Act for the collection of their charges, or any careful consideration of the policy of Congress with respect to the transportation by said carriers of persons and property for the United States, as expressed in the Interstate Commerce Act as a whole, whereas, if it had done so, it must have perceived that in said provision of the Transportation Act Congress was dealing only with actions by carriers against private shippers, and had no intention of disturbing the relations theretofore existing between such carriers and the United States with respect to Government transportation, and payment therefor.

IV.

The Act of June 7, 1924, Chap. 325 (43 Stat. 633).

We have set out above the amendments to paragraph (3) of the Section 16 of the Interstate Commerce Act made by the Act of June 7, 1924.

The changes and additions to said paragraph (3) made

by this Act of June 7, 1924, are immaterial so far as the question here under consideration is concerned, said statute reenacting the three-year limitation contained in the Transportation Act as to "actions at law" by carriers for the collection of their charges, and the provision as to when the "cause of action" should be deemed to accrue, in precisely the same terms as they were originally enacted, although their arrangement in said paragraph is different.

Since, for the reasons above stated, the limitation of three years upon the bringing of "actions at law" by carriers subject to the Act to Regulate Commerce for the recovery of their charges, provided by the Transportation Act of 1920, was not intended to apply to a proceeding by a carrier subject to the Act in the Court of Claims for the establishment of a claim against the United States arising out of transportation services rendered by it to the Government, it is apparent that the amendatory Act of June 7, 1924 is not to be given any different construction, there being nothing in the latter Act to suggest or require any extention of its inhibitions to proceedings in the Court of Claims by a carrier of the character stated. It is unnecessary, therefore, to determine, in the cases now before the court, the exact meaning of subdivision (h) of said paragraph 3 added by the amendatory Act of June 7, 1924 providing that "the provisions of this paragraph (3) shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereinafter accrue." etc., since the statute as a whole has no application to proceedings by carriers of the character stated in the Court of Claims.

V.

CONCLUSION.

In conclusion, we submit that the two statutes—the Judicial Code, Section 156, and the amendments to the Interstate Commerce Act under consideration here—relate to entirely different subject-matters, and that the three-year limitation in the latter Interstate Commerce Act as so amended has no application whatsoever to "claims" by railroad companies against the United States in the Court of Claims growing out of their charges for Government transportation, but relates entirely to "actions at law" brought by carriers against private shippers in the ordinary courts of the land for the recovery of their charges, the prompt collection of which charges from private shippers Congress was alone seeking to enforce.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1925.

No. 91.

THE UNITED STATES, *Appellant*,

vs.

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLEE.

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THE UNITED STATES, *Appellant*,

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APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLEE.

THE OPINION OF THE COURT OF CLAIMS.

With the findings of fact the Court of Claims filed simply a memorandum as follows:

> "See cases of *Schaff, Receiver*, No. A-241, decided March 3, 1924, and *Wabash Railway Company*, No. C-74, decided March 3, 1924." (R. 6.)

The opinions in the cases referred to are reported in 59 Ct. Cls. 318, 322.

GROUNDS OF JURISDICTION.

The judgment of the Court of Claims was entered March 17, 1924, and the Government's motion for a new trial was overruled April 7, 1924. The appeal was allowed June 2, 1924, on motion of the Assistant Attorney General, under sections 242 and 243 of the Judicial Code. (R. 6, 7.)

STATEMENT OF THE CASE.

In August, 1917, the railway company (the appellee) carried twenty-seven carloads of "military impedimenta" for the United States, on Government bill of lading, from Ft. Sill, Oklahoma, to Camp Bowie, Texas. In due time it presented its bill for $2,452.29 on the basis of freight rates. The bill was disallowed by the Auditor for the War Department, September 16, 1918, because of a ruling of the Comptroller of the Treasury to the effect that the Government was entitled to the carriage of one carload of military impedimenta free for every twenty-five soldiers carried as passengers, under certain provisions of the passenger tariffs. (R. 5.)

In suits brought by other companies the Court of Claims held that the Comptroller's ruling was wrong. *Missouri Pacific Railroad Co. v. United States*, 56 Ct. Cls. 341, decided June 13, 1921. See also the opinion of this court in *St. L. B. & M. Ry. Co. v. United States*, 268 U. S. 169, 173.

Thereupon the railway company filed its petition in the Court of Claims, on March 8, 1923, claiming $2,452.29 on account of the service rendered. (R. 1.)

The Court of Claims found that the amount to which the railway company was entitled, on the basis of freight rates less land-grant deductions, was $2,234.97, and entered judgment for that amount. (R. 6.)

THE QUESTION ON APPEAL.

The railway company's petition was filed in the Court of Claims on March 8, 1923. The service was rendered in

August, 1917. Obviously the petition was filed within the six years allowed under Section 156 of the Judicial Code. The sole question for decision is whether the amendment of section 16, paragraph (3) of the Interstate Commerce Act, by the Transportation Act of February 28, 1920, ch. 91, 41 Stats. 456, and the act of June 7, 1924, ch. 325, 43 Stats. 633, as follows:

> "All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after."

barred the railway company's claim because (1) the petition had not been filed within three years from the date the service was rendered, or because (2) it had not been filed within three years from the date of the amendment, February 28, 1920.

THE ARGUMENT.

SUMMARY.

I. Section 16, paragraph (3), as amended, does not apply *at all* to claims presented to the Court of Claims, *first*, because it was clearly not intended, and, *second*, because the amendment by its terms does not apply to such claims.

II. The amendment is prospective in its effect and does not apply to causes of action or claims in existence at the date of its enactment.

I.

THE RAILWAY COMPANY'S CLAIM IS NOT AFFECTED IN ANY WAY BY THE AMENDMENT OF SECTION 16, PARAGRAPH (3), BECAUSE THE SECTION DOES NOT APPLY AT ALL TO CLAIMS PRESENTED TO THE COURT OF CLAIMS. IT DOES NOT AMEND OR HAVE THE EFFECT OF AMENDING SECTION 156 OF THE JUDICIAL CODE WHICH ALLOWS SIX YEARS FOR PRESENTING CLAIMS TO THE COURT OF CLAIMS. IT WAS CLEARLY NOT THE INTENTION OF THE LEGISLATORS TO DO SO, AND THE WORDS USED DO NOT HAVE THAT EFFECT.

From the act as a whole (either the Interstate Commerce Act as amended, or the Transportation Act considered separately) the intention of section 16 (3) is fairly indicated to limit the collection of charges *under the act* from shippers *subject to the act*.

That the intention of Congress is to be determined from a consideration of the act as a whole and the purposes to be served is obvious.

> *E. I. Dupont de Nemours & Co. v. Davis*, 264 U. S. 456.

(1) The amendment of section 16, paragraph (3) is contained in Title IV of the Transportation Act, 1920. The

act consists of five titles. As this court said in *Dupont v. Davis,* 264 U. S. 460, while these titles are concerned with related subjects, they are entirely distinct one from another. Title IV consists entirely of amendments to the interstate Commerce Act. The evident purpose of Title IV was to perfect the Interstate Commerce Act, to adjust differences between the carriers and the shipping public, to remedy defects and inequities revealed by the practical operation of the law. It is impossible to find any purpose to deal with the relations between the carriers and the Government. On the contrary, in amending section 3 of the act to require collection of charges before delivery or relinquishment of possession, Congress was careful to add a proviso that this should not be construed to prevent the extension of credit to the Government.

The intention to exclude the Government as a shipper from the operation of the Interstate Commerce Act is evident from section 22, and section 3, paragraph (2) as amended by the Transportation Act. Section 22 reads:

> "That nothing in this Act shall prevent the carriage, storage or handling of property free or at reduced rates for the United States, State, or municipal governments."

And section 3, paragraph (2), as amended by the Transportation Act:

> "(2) From and after July 1, 1920, no carrier by railroad subject to the provisions of this Act shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to assure prompt payment of all such rates and charges and to prevent unjust discrimination; *Provided,* That the provisions of this paragraph shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States,

for any department, bureau, or agency thereof, or for any State or Territory or political subdivision thereof, or for the District of Columbia."

The proviso was added because of the long established practice of handling transportation accounts between the Government and the railroad companies. It is well known that the railroads perform service for the Government, on bills of lading and transportation requests, without requiring prepayment of the charges for transportation. The forms of bills of lading and transportation requests are prescribed by the Comptroller of the Treasury (now the Comptroller General) and approved by the Secretary of the Treasury, and after accomplishment are used to support the carrier's bills when presented for payment. 14 Comptroller's Decisions 967.

(2) It is a fair construction to read section 16 (3) with section 3 (2) as amended, the intention obviously being to prevent unjust discrimination and to require prompt payment. By section 16 (3) it was provided that the three years' period within which actions at law for recovery of charges shall be brought, begins to run "upon delivery or tender of delivery" of the shipment. This is to be read with section 3 (2), which provides that from and after July 1, 1920, no carrier by railroad, subject to the provisions of this Act, shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to assure prompt payment and to prevent unjust discrimination. The purpose of these sections is plainly to prevent unjust discrimination and to that end to require prompt payment of charges.

By the express terms of the Act, however, the carriers *may* discriminate in favor of the United States (section 22) and may extend credit to the United States, section 3 (2) as amended, and judicial notice will be taken of the

fact that all such transportation is performed on credit. It is a fair reading of the Act to infer that it was *not* intended to require collection of charges from the United States within three years, as from other shippers, especially as such a conclusion means a repeal by implication of section 156 of the Judicial Code. The Government availing itself of this privilege of transportation on credit, necessarily reads itself outside of those provisions of the Act dealing with cash payments and prompt settlements.

(3) The conclusion is helped by consideration of the nature of claims presented to the Court of Claims and the jurisdiction of the Court of Claims.

Certainly an action or suit in that court is not an action at law for transportation charges *fixed under the Interstate Commerce Act,* because the Government is expressly exempt, under section 22, from the operation of the Act in so far as the collection of tariff charges is concerned. A suit by a carrier in the Court of Claims for money claimed to be due for the transportation of freight or passengers is a suit on an express contract, evidenced by the government bill of lading or transportation request, or else a suit on implied contract under section 145 of the Judicial Code. The carrier has performed service for which it is entitled to be paid and its claim rests on contract. It is not a claim for statutory charges fixed by law, as when such charges are collected from a private shipper. *Pittsburgh etc. Railway Co. v. Fink,* 250 U. S. 577; *New York Central Railroad Co. v. York & Whitney Co.* 256. U. S. 406.

Ordinarily a carrier suing the Government in the Court of Claims presents its claim on the basis of tariff rates less land-grant deductions, on the theory that there is an implied agreement to pay such rates in the absence of an express agreement to pay more or less. In fact, however, claims may be and sometimes are presented for more or less than tariff rates, as, for example, when a special service is rendered not covered by the tariffs, or when there is an express agreement on the part of the Government to

pay more or on the part of the carrier to accept less than tariff rates.

Bush, Receiver v. United States, 52 Ct. Cls. 199.
Yazoo & Mississippi Valley R. R. Co. v. United States, 54 Ct. Cls. 165.
Los Angeles & Salt Lake R. R. Co. v. United States, 55 Ct. Cls. 305.
Atchison, Topeka and Santa Fe Ry. Co. v. United States, 59 Ct. Cls. 275.

(4) Section 16, paragraph (3), does not apply, by its terms, to claims in the Court of Claims.

It provides that all "*actions at law*," etc., shall be begun within three years from the time the cause of action accrues, and not after.

A claim presented to the Court of Claims is not an "action at law." The act establishing and defining the jurisdiction of the Court of Claims, as now incorporated in section 145 of the Judicial Code, provides that the Court of Claims "shall have jurisdiction to hear and determine the following matters:

> "all *claims* * * * in respect to which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable."

So also it is provided by section 156 of the Judicial Code:

> "Sec. 156. "Every *claim* against the United States cognizable by the Court of Claims, shall be forever barred unless the *petition* setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the *claim* first accrues."

It may be said, therefore, that a claim pending in the Court of Claims on petition of a claimant is hardly an "action at law" to enforce a legal right, but is more in the nature of a proceeding authorized by statute to establish by proof a claim against the Government to be reported to Congress for appropriation, *which is exactly the procedure in every case.* The appropriation, while usually made as a matter of course, may nevertheless be withheld, and in some cases has been withheld, as in many of the French Spoliation cases.

(5) The Government cites and relies on *Fort Pitt Gas Co.* v. *United States,* 49 Ct. Cls. 224; *Kahn* v. *United States,* 55 Ct. Cls. 271; and *Christie-Street Commission Co.* v. *United States,* 136 Fed. 326. In those cases it was held that suits against the United States to recover taxes illegally exacted are governed by section 3227 of the Revised Statutes which provides for a limitation of two years for all such suits, and not by section 156 of the Judicial Code which applies generally to suits in the Court of Claims.

First, it is to be observed by comparing the language of the statutes that there is a difference between the statute considered in those cases and the statute under consideration here. R. S. 3227 provides:

> "No suit or proceeding for the recovery of an internal tax alleged to have been erroneously or illegally assessed or collected * * * shall be maintained in any court unless the same is brought within two years next after the cause of action accrued."

Section 156, Judicial Code, provides:

> "Every claim against the United States cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the claim first accrues."

It is apparent, as the courts held in the cases cited, that there is no necessary inconsistency between the two statutes and that it was clearly the intention of Congress to treat tax cases as a special class of cases, a policy which was in effect before the enactment of the Tucker act in 1887. R. S. 3227 stood by itself and could be given effect only by applying it to all cases covered by its terms.

But in the present case we have under consideration a statute which is an amendment of one paragraph of one section of the Interstate Commerce Act. It may be given effect, as we think was intended by Congress, by limiting it to its natural operation as a part of the Interstate Commerce Act, without applying it to claims against the Government and without disturbing the jurisdiction of the Court of Claims or the operation of Section 156 of the Judicial Code in any manner.

Second. It is also to be noted that Section 3227 of the Revised Statutes was enacted and was law *before* the Tucker Act was passed in 1887 (the act of March 3, 1887, ch. 359, 24 Stats. 505), containing the six years limitation now incorporated in Section 156 of the Judicial Code. The court in its opinion in *Christie-Street Commission Co.* v. *United States, supra,* called attention to this fact, 136 Fed. 332. When the Tucker Act was passed in 1887 there was and had been for many years a code of laws which prescribed the rights of citizens in the adjustment of claims for excessive payment of taxes, including the limitation contained in R. S. 3227. The Tucker Act of 1887 was a general law applying to many classes of claims, and was not inconsistent with the *then existing* statute which prescribed a limitation applicable to a particular class.

In the present case, however, we have a general law which has been in force since 1887, and against it we have the statute under consideration, an amendment to the Interstate Commerce Act, which, it is argued, by implication limits the application of the general law. The cases are quite different, and the same argument, that repeals are

not to be implied, which helped the decision in *Christie-Street Commission Co.* v. *United States* and *Fort Pitt Gas Co.* v. *United States,* is effective and supports our argument in the present case, namely, that the operation of section 156, Judicial Code, is not affected by the act of February 28, 1920.

We return then to our first proposition that section 16 (3) does not apply at all to claims presented to the Court of Claims by railroad companies who have not been paid for transportation service furnished the government, because

(1) It is clear, from consideration of the Transportation Act alone or the Interstate Commerce Act as a whole, that the Government as a shipper is excluded generally from the operation of the act, as evidenced by section 22 and section 3, paragraph (2);

(2) Section 16, paragraph (3), and section 3, paragraph (2), read together, show that the purpose of those two sections as amended by the Transportation Act was to prevent unjust discrimination and to that end to require prompt payment of charges;

(3) The nature of such claims and the jurisdiction of the Court of Claims negative the idea that it was intended by Congress to apply the statute to such cases;

(4) Section 16, paragraph (3) does not apply, by its terms, to such claims.

II.

SECTION 16, PARAGRAPH (3) AS AMENDED BY THE ACT OF FEBRUARY 28, 1920, IN ANY EVENT DOES NOT APPLY TO CAUSES OF ACTION OR CLAIMS WHICH HAD ALREADY ACCRUED.

If the amendment is to be given effect as to claims in the Court of Claims, assuming for the argument that we are

mistaken in supposing that it was not intended and does not apply at all to such claims, then we submit that in accordance with the well known rules of statutory construction it must be given prospective and not retroactive effect. Given such effect it applies to all causes of action or claims arising after its enactment and on such causes of action suit must be instituted within three years from accrual of the cause of action. But as to causes of action or claims *in existence on February 28, 1920,* such as the claim in the present case, the amendment does not apply. Such claims are not barred by limitation except in case of failure to file the petition in the Court of Claims within the six years allowed by section 156 of the Judicial Code.

The general rule is that statutes, other than curative and remedial statutes, are always to be construed prospectively unless it is distinctly expressed or clearly and necessarily implied that the statute is to have a retroactive effect, and that the words of the statute are not to be given a retrospective meaning unless they are so clear, strong and imperative that no other meaning can be annexed to them or unless the intention of the legislature cannot be otherwise satisfied.

United States v. Heth, 3 Cranch 399.
Twenty Percent Cases, 20 Wall. 179.
U. S. Fidelity Co. vs. Struthers Wells Co., 209 U. S. 306.
Winfree v. Northern Pacific Railway Co., 227 U. S. 296.
Union Pacific Railroad Co. v. Laramie Stock Yards Co., 231 U. S. 190.
Shwab v. Doyle, 258 U. S. 529.
Fullerton-Krueger Lumber Co. v. Northern Pacific Railway Co., 266 U. S. 435.
25 Ruling Case Law 785-793, secs. 34-39.

The cases cited are some of the cases in this court in which the general rule has been stated and applied. The language used in the opinions is clear and positive.

"Words in a statute ought not to have a retrospective operation, unless they are so clear, strong, and imperative, that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. This rule ought especially to be adhered to, when such a construction will alter the preexisting situation of parties, or will affect or interfere with their antecedent rights, services, and remuneration; which is so obviously improper, that nothing ought to uphold and vindicate the interpretation, but the unequivocal and inflexible import of the terms, and the manifest intention of the legislature." *United States v. Heth,* 3 Cranch 399, 413.

"Even though the words of the statute are broad enough in their literal extent to comprehend existing cases, they must yet be construed as applicable only to cases that may hereafter arise, unless the language employed expresses a contrary intention in unequivocal terms." *Twenty Percent Cases,* 20 Wall. 187.

"There are certain principles which have been adhered to with great strictness by the courts in relation to the construction of statutes as to whether they are or are not retroactive in their effect. The presumption is very strong that a statute was not meant to act retrospectively, and it ought never to receive such a construction if it is susceptible of any other. It ought not to receive such a construction unless the words used are so clear, strong and imperative that no other meaning can be annexed to them or unless the intention of the legislature cannot be otherwise satisfied." *U. S. Fidelity Co. v. Struthers Wells Co.,* 209 U. S. 314.

"The rule has been expressed in varying degrees of strength but always of one import, that a retrospective operation will not be given to a statute which interferes with antecedent rights or by which human action is regulated, unless such be 'the unequivocal and inflexible import of the terms, and the manifest intention of the legislature.'" *Union Pacific Railroad Co. v. Laramie Stock Yards Co.,* 231 U. S. 199.

Fullerton-Kruger Lumber Co. v. Northern Pacific Railway Co., 266 U. S. 435, decided at the last term, is a case in which it was sought to give retroactive effect to another

section of the Transportation Act, 1920, namely, section 206, paragraph (f) which provides:

> "The period of Federal control shall not be computed as a part of the periods of limitation in actions against carriers or in claims for reparation to the Commission for causes of action arising prior to Federal control."

The plaintiff sued the railway company for excess freight charges collected. The defense was the local statute of limitations under which the plaintiff's claim had been barred some time during Federal control. The plaintiff contended that section 206, paragraph (f) of the Transportation Act had the effect of reviving causes of action when the period designated by the State statute for bringing them had expired during Federal control and asserted that the mischief to be remedied indicated such purpose and the ordinary meaning of the words employed disclosed it. But this court, applying the rule that all statutes are to be considered prospective "unless the language is express to the contrary, or there is a necessary implication to that effect" held that the statute should not be applied to causes barred by limitation before its passage.

The general rule applies to statutes of limitation as well as to other statutes.

> *Sohn v. Waterson*, 17 Wall. 596.
> *Murray v. Gibson*, 15 How. 421.
> *Bonfils v. Public Utilities Com.* 67 Colo. 563, 189 Pac. 775.
> *Ludwig v. Stewart*, 32 Mich. 27.
> *Robertson v. Wheeler*, 162 Ill. 566, 44 N. E. 870.
> 25 Ruling Case Law, 792-793; 17 Ruling Case Law, 682-684.

As the court held in *Ludwig v. Stewart*, 32 Mich. 27, if a statute of limitations is to apply to past transactions it must fix with certainty the time within which the action

must be brought, and *in the absence of such provision* such cases are governed *by the statute in force at the time of the transaction.*

Counsel for the Government contend that the general rule of construction that statutes are to be considered prospective is inapplicable to the present case and assert that courts have never hesitated to give a retrospective effect to statutes of limitation when the time remaining to the plaintiff within which to bring a suit is reasonable, relying upon cases in which various periods of time were held to be reasonable. In such cases, however, it invariably appeared that it was the *intention* of the legislature to have the act apply to causes of action which had already accrued, and the question was whether the time allowed for bringing suit on such causes of action was, on the one hand, reasonable, or, on the other hand, so short that the act would be invalid on constitutional grounds. That is true of the cases cited in the Government's brief on page 17, except *Button v. A. T. & S. F. Ry. Co.,* which will be referred to hereinafter.

The argument for the Government is that *in the present case* giving the statute retroactive effect the plaintiff would have had three years from the accrual of its cause of action (August, 1917) which would have meant until August 1920, thus there would have been a period of about six months from the date of the Act within which the plaintiff might have filed its suit. The argument, if valid at all, applies to all cases. In other cases three years from the accrual of the cause of action might have already elapsed when the act was passed on February 28, 1920. *That is exactly true* of the case of *United States v. Southern Railway Company* which is now pending in this Court, No. 501 at this term, on appeal from the Court of Claims, decided by the Court of Claims on February 21, 1925. An examination of the record in that case will disclose that the cause of action accrued in November 1916. If the act of February 28, 1920, were given retroactive effect, as contended by the Government, it would destroy the plaintiff's cause of action

without allowing any time for filing suit. The *Southern* case illustrates the fallacy of the argument. The act cannot be held retroactive and applied to one case without applying it to all cases, which would obviously result in destroying some causes of action without allowing any time whatever for filing suit, as in the *Southern* case.

The case of *Button v. Atchison, Topeka and Santa Fe Railway Co.* 1 Fed. (2d) 709, is not persuasive when the opinion of the court is examined in the light of the facts of the case. The railway company sued for an undercharge after having quoted the charges in advance and received payment. At the time the shipment was made there was no federal statute of limitations (the shipment was before the enactment of the Transportation Act, 1920) and actions by railroad companies for recovery of transportation charges were governed by the State statutes of limitation. The statute of Oklahoma allowed three years. On February 28, 1920, the railway company's cause of action had been subject to the local statute for two years and four months. The Transportation Act, 1920, amended section 16, paragraph (3) of the Interstate Commerce Act and provided that all actions at law by carriers for recovery of their charges shall be begun within three years from the time the cause of action accrues, thus enacting for the first time a federal statute of limitations for such actions. The railway company contended that under the amendment it was entitled to the three years fixed by the federal statute *from February 28, 1920, in addition to the time which had already run under the local statute.* Its suit was actually filed more than three years from the accrual of its cause of action and was already barred under the local statute. The curious thing about the case is that the court instead of holding that the federal statute was not retroactive and leaving the claim to be governed by the local statute under which it was already barred, held that the federal statute should be given retroactive effect from the accrual of the plaintiff's cause of action, so as to bar the claim, just as it was already barred

under the local statute. It may be observed also that the court was careful to say that the case might be different if the State statute provided a longer period of limitation (as for example, in this case the general Court of Claims statute allowing six years) or if the plaintiff's right under the former law were impared or destroyed by applying the federal statute and giving it a retroactive effect. See the last paragraph of the opinion, 1 Fed. (2d) 712.

(2) The amendment of June 7, 1924.

The act of June 7, 1924, ch. 325, 43 Stats. 633, reenacted section 16, paragraph (3), with slight changes immaterial so far as the question here under consideration is concerned, adding, however, subdivision (h) as follows:

> "(h) The provisions of this paragraph (3) shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue, * * *"

Counsel for the Government concede that if the act of June 7, 1924, is to be treated as effecting a change in the law, and not as a declaration of the intention of the 1920 act, it would be unconstitutional with respect to private shippers in some cases. See pages 25 and 27 of their brief. For that reason they argue that the act of 1924 must be accepted as declaratory of the purpose of the earlier act, so that the rule in *Sohn v. Waterson*, 17 Wall., 596, may be applied, thus barring a claim not filed within three years *from the date of the act of 1920*, as the claim in this case.

We point out simply that there is nothing in the act of 1924 which expressly makes the act of 1920 retroactive or bars any suit *which had been filed prior to the act of 1924*. The act of 1924 provides:

> "(3) (a) All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after. * * *

> "(h) The provisions of this paragraph (3) shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue, * * *"

The language is clear—that all actions *shall be* barred within three years and that the limitation shall be applicable to causes of action which have already accrued, but there is not one word which suggests that any suit which has *already been filed* is to be barred. On the other hand, the words *"shall be begun"* indicate clearly that the statute applies to *actions brought* after its passage although on causes of action which had accrued prior thereto. As this Court said in *United States vs. Sugar Refining* Co., 202 U. S. 563, 578-579:

> "Future time and past time are directly opposite, and by no inadvertence or intention can we believe or suppose that Congress, having in mind and purpose the distinction between the past and the future, should use language that expressed the one while it meant to provide for the other."

We also point out that the legislative history of the act of June 7, 1924, shows clearly that the purpose of the act was not to bar any causes of action, but on the contrary was to *revive* those causes of action which had already accrued in favor of shippers for the recovery of straight overcharges, and which had become barred by the interpretation of the 1920 act by this Court in *Kansas City Southern Railway Co. v. Wolf*, 261 U. S. 133. The reports of the committees of the House and Senate give fully the reasons for the passage of the act of 1924, and negative any possibility that it was passed for any such purpose as is contended for by the Government in this case. The report of the Senate Committee on Interstate Commerce is printed at pp. 5072-5073, Vol. 65, Congressional Record. We have printed as an appendix to this brief the report of the House Committee, pp. 21-22, *post*. The bill was passed without debate

or discussion other than the explanation made by the chairman of the committee. See Vol. 65, pp. 5061, 5072-5073.

(3) The rule, or rather the modification of the general rule, in *Sohn v. Waterson,* 17 Wall. 596, is not applicable to the present case.

In *Sohn v. Waterson* the facts were that Sohn had obtained a judgment against Waterson in Ohio in 1854. Shortly thereafter Waterson moved to Kansas and became a citizen of that State. February 19, 1859, the legislature of Kansas passed a statute which enacted that on certain causes of action, including foreign judgments, action "shall be commenced within two years next after the cause or right of such action shall have accrued, and not after." In 1870 Sohn filed his suit in the courts of Kansas on the Ohio judgment. The question for decision was whether the statute of limitations, enacted after Waterson had become a resident of Kansas and after Sohn's cause of action against him in that State had accrued, applied at all to such a cause of action. It was contended by the plaintiff that the statute did not apply at all *and that there was no limitation on his right to sue* (there being no statute of limitation prior to the act of 1859). This court, applying the general rules of construction that statutes are always to be considered prospective and that any construction which would render an act unconstitutional is to be avoided, held that the act of the Kansas legislature should be construed as effective from the date of its passage, *and so construed should apply to causes of action which had already accrued, i. e.,* on such causes of action suit might be filed within two years from that date. The reason for applying the statute at all to causes of action which had already accrued at the date of the passage of the act was that *otherwise such causes of action would have been left "without any limitation at all (which, it is presumed, could not have been intended)."* See the opinion of Mr. Justice Bradley, 17 Wall. 599.

Thus the rule as applied in *Sohn v. Waterson* was a modi-

fication of the general rule necessary because the statute under consideration was a new statute not taking the place of a prior statute and because if the rule were not so modified and applied to causes of action which had already accrued at the date of the passage of the act, such causes of action would be left without any limitation at all, which, as Justice Bradley said, presumably could not have been intended.

In the present case, however, there is no such reason or necessity, because if, as we contend, the amendment of February 28, 1920, does not apply to causes of action which had already accrued, *they remain subject to the limitation of six years provided in section 156 of the Judicial Code.*

CONCLUSION.

The judgment of the Court of Claims should be affirmed, either because (1) section 16 (3) of the Interstate Commerce Act, as amended, does not apply at all to claims in the Court of Claims, or because (2) it is to be construed as prospective and not applicable to claims or causes of action which had already accrued.

Respectfully submitted,

ALEX. BRITTON,
LAWRENCE H. CAKE,
Counsel for Appellee.

APPENDIX.

REPORT.

[To accompany S. 2704.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 2704) to amend paragraph (3), section 16, of the interstate commerce act, having considered the same, report thereon with a recommendation that it pass.

Its provisions are the same as those in H. R. 8285 (introduced by Mr. Newton of Minnesota), and it embodies ideas somewhat similar to those contained in H. R. 6058 (introduced by Mr. Newton of Minnesota) and H. R. 5720 (introduced by Mr. Ayres of Kansas).

Paragraph 3 of section 16 of the interstate commerce act, as amended, pertains to limiting of the right to bring causes of actions by the carriers against shippers and by shippers against the carriers. All actions at law by carriers for recovery of their charges shall be begun within three years after the cause of action accrues. The shipper under existing law has two years in which to bring his action for the recovery of damages from the carrier. The shipper can proceed by two methods: He can complain to the Interstate Commerce Commission or he can bring suit for damages. In claims for reparation he makes complaint to the Commission; and generally, in claims for straight overcharges, he brings a court action in the first instance to recover the amount due him for a charge which is in excess of the published tariff.

The existing law is very clear that the limitation as to proceedings on complaints before the Commission for the recovery of damages is two years. It has been almost universally the practice of both carriers and shippers to regard the statute of limitations of the State, where the cause of action accrues, as controlling in the bringing of actions in court for the recovery of straight overcharges.

About one year ago in the case of the *Kansas City Southern Railway Co. v. Wolf, et al.* (261 U. S. 133), the Supreme Court of the United States held in an action at law to recover straight overcharges that the statute of limitations against the shipper was two years. This was a great surprise to all the shippers and most of the carriers. The result was that a large number of claims were barred by the

statute as so construed in this decision. The court also held, approving prior decision in Grand Trunk Western Railway Co. (236 U. S. 662, 667), that the running of the statute of limitations barred not only the remedy, but also the liability; and that the carrier was bound to claim the benefit of the statute.

Congress adjourned shortly after the decision was rendered. The above measures were introduced for the purpose of changing the law and of correcting the injustice ensuing by the barring of these many claims.

Under its provisions the carriers still have the benefit of the three-year limitation in the bringing of actions to recover their charges. Shippers are still governed by a two-year limitation for the recovery of damages not based on overcharges.

For the recovery of overcharges in action at law, shippers are given three years from the time the cause of action accrues. Provision is made for an extension, providing claim for the overcharge is presented in writing to the carrier within the three-year period. In this event the period of limitation is extendd to include six months from the time notice is given by the carrier to the shipper of disallowance of the claim. In other words, the claimant will then have six months in which to make up his mind whether to bring suit or not.

The last paragraph (a), revives the claims that were barred under existing law, following its interpretation in the Wolf case. The revival period extends to within six months following the going into effect of the provisions of this bill.

The bill has the approval of the Interstate Commerce Commission, as will appear by the letter attached and which is made a part of this report.

Office Supreme Court
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WM. R. STANS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

No. 92

THE UNITED STATES, *Appellant*,

v.

WABASH RAILWAY COMPANY

Appeal from the Court of Claims

BRIEF FOR APPELLEE

F. CARTER POPE,
Attorney for Appellee.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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In The

Supreme Court of the United States

October Term, 1925

No. 92

The United States, *Appellant*,
v.
Wabash Railway Company

Appeal from the Court of Claims

BRIEF FOR APPELLEE

OPINION BELOW

The opinion of the Court of Claims is found at page 10 of the Record and in 59 Ct. Cls., 322.

Grounds of Jurisdiction

The case is here by the Government's appeal, taken June 2, 1924, under Sections 242 and 243 of the Judicial Code, from final judgment entered May 5, 1924.

STATEMENT OF CASE

This case is here on the Government's appeal from a judgment of the Court of Claims in plaintiff's favor. On the merits of the case there is no defense, appellee being

entitled to recover both under the decisions of this court in *Atchison, Topeka & Santa Fe Ry. v. The United States,* 256 U. S., 205, and under the terms of the military agreements set forth in the findings, between the War Department and carriers, including appellee. See *International & Great Northern Ry. v. The United States,* 56 Ct. Cls., 336.

The petition in this case was filed March 17, 1923, and the ground of the Government's appeal is that the suit is barred by that provision of the Transportation Act of 1920, approved February 28, 1920, reading as follows:

> "(3) All actions at law by carriers subject to this act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, unless the carrier, after the expiration of such two years, or within ninety days before such expiration, begins an action for the recovery of charges in respect of the same service, in which case such period of two years shall be extended to and including ninety days from the time such action by the carrier is begun. In either case the cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after. A petition for the enforcement of an order for the payment of money shall be filed in the district court or State court within one year from the date of the order, and not after."
>
> (Ch. 91, 41 Stats. L., Vol. 1, 492.)

and by what seems to be a clarifying act of June 7, 1924, the material part of which is as follows:

> (3) (a) All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.
>
> * * * * * * *

(e) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

* * * * * * *

(h) The provisions of this paragraph (3) shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue, except that actions at law begun or complaints filed with the commission against carriers subject to this Act for the recovery of overcharges where the cause of action accrued on or after March 1, 1920, shall not be deemed to be barred under subdivision (e) if such actions shall have been begun or complaints filed prior to enactment of this paragraph or within six months thereafter."

(Ch. 325, 43 Stats. L., Vol. 1, 633.)

In this case appellee rendered one bill to the disbursing officer, who paid it in full. Later it rendered another bill and the second bill was allowed in full, and, according to the Government's own contention, *paid* in full, this payment being partly in cash and partly by the cancellation of an *alleged* obligation of appellee's in the amount of $7,663.56 growing out of the alleged overpayment of the previous bill (R. 9).

Appellee's reply to the Government's contention therefore is, *first*, that the 3-years' limitation in the Transportation Act and in the subsequent act of June 7, 1924, does not apply at all to railroad claims against the Government doing business with carriers on credit, and, *second*, even if such limitation does apply to such claims, it has no bearing on this case, which is founded upon an appropriation of so much of plaintiff's money, which appropriation can be defended only upon the basis of its propriety. This second point was made in the court below, strenuously argued by both sides and sustained by the court. In their brief filed in this case Government counsel seem to have overlooked it altogether.

Transportation for the War Department is obtained from carriers upon the Government's request therefor, evidenced, in the case of a freight shipment, by the tender of a "Government" bill of lading covering the property to be shipped, and, in the case of passenger transportation, by what is known as a Transportation Request. The form and contents of these documents (though not the substance and intent) may have changed to some extent since they were set forth in 14 Comp. Dec., 967, et seq. The latest revision of their forms antecedent to the transportation herein involved is set forth in Treasury Departmental Circular No. 49, of 1915, issued by the Comptroller with the approval of the Secretary. The Transportation requests contained the following, on the back thereof:

"General Instructions to Carriers

* * * * * * *

6. Transportation Requests must not be passed through the banks for collection from the Government.

* * * * * * * *

9. Bills must be submitted by the general officers of carriers, and on forms furnished by the Government, to be obtained from the Public Printer, Washington, D. C.

10. Original requests must accompany, and the numbers thereof entered on, each bill."

(Page 8.)

The freight bills of lading contained the following on the back thereof:

"General Conditions and Instruction Conditions

It is mutually agreed and understood between the United States and carriers who are parties to this bill of lading that—

1. Prepayment of charges shall in no case be demanded by carrier, nor shall collection be made from consignee. On presentation to the office indicated on

the face hereof of this bill of lading, properly accomplished, attached to freight voucher prepared on the authorized Government form, payment will be made to the last carrier, unless otherwise specifically stipulated."

(Page 14 of said Treasury Circular.)

Thus, it will be seen that it is provided in both cases that credit is extended to the Government with no limitation on the period of credit.

In actual practice bills of carriers are presented to some designated disbursing, or subordinate accounting, officer, whose disbursements are regulated by the head of the Accounting Department of the Government, and the bills must be supported by the bills of lading or the transportation requests. If there is any irregularity, or apparent irregularity, about the bill of lading or transportation request, even though it be no fault of carrier, or in event of failure of the issuing officer to report the service to the disbursing office, payment is withheld until the irregularity can be straightened out or a report of the service obtained. Sometimes the documents are lost and must be supplied in accordance with regulations. Frequently payment is held up to await a ruling of the head of the Accounting office, or, perhaps, for the decision of a court. While it may be a variation from the ordinary, it is by no means unusual for a determination of the basis of payment, and consequently for the payment itself, to be delayed for more than three years after the rendition of the service—and this without the laches, negligence or fault of either party.

We make this statement, which is but common knowledge, concerning the actual practice, not as an argument that said 3-years' limitation ought not to be held applicable to Government transportation, but to show what can and does happen in the course of the discharge of the valid contracts made by the requests and bills of lading.

It is legitimate for us to suggest, we think, that the purpose of the proponents of the legislation fixing a 3-years

limitation in the Transportation Act for "actions at law" for the recovery of charges seems to have been to substitute a uniform statute in place of the various conflicting and different statutes prevailing throughout the country, and to prevent the assertion of stale claims against private parties. This view finds considerable support in that amendment to Section 3 of the Interstate Commerce Act, found in Section 405 of the Transportation Act, as follows:

> "(2) From and after July 1, 1920, no carrier by railroad subject to the provisions of this Act shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to assure prompt payment of all such rates and charges and to prevent unjust discrimination: Provided, That the provisions of this paragraph shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for any State or territory or political subdivision thereof, or for the District of Columbia."
>
> (Ch. 91, 41 Stats. L., Vol. 1, p. 479.)

It seems to us that this express provision controls that general provision with respect to when the cause of action shall be deemed to accrue, insofar as shipments by the Government are concerned.

There may be *old* claims for transportation charges due carriers from the Government, but there can hardly be such a thing as a *stale* claim as that term is generally understood, because the Government always knows from its own records whether services have been rendered and whether they have ben paid for. It is nver surprised by the presentation of an old claim, because it is necessarily supported by the Government's own evidence that it has not been paid for.

THE QUESTIONS

The questions involved in this appeal are:

(1) Whether the 3-years limitation of actions provided by the Transportation act of 1920 (and the act of June 7, 1924) apply at all to railroad claims against the Government, and if so, to what extent, and

(2) Whether said 3-years limitation, assuming it does apply to railroad claims against the Government, can bar appellee's claim based upon money withheld from it.

ARGUMENT

Summary

I. The 3-years' limitation of actions provided in the Transportation act of 1920, and the act of June 7, 1924, do not apply at all claims of railroads for transportation furnished the Government doing business with them on credit.

(a) The said 3-years' limitation can apply to railroad transportation claims against the Government only as a repeal by implication and in unusual terms of the existing 6-years' limitation, and therefore should not be so construed.

(b) The application of the 3-years' limitation to carriers granting credit to the Government by long continued practice and by express provision of law, would discriminate against them as compared with others sustaining contractual relations with the Government, and could not have been so intended.

(c) Railroad transportation claims against the Government are taken out of the 3-years' limitation by the valid contracts under which the liability is created.

II. The most that can be claimed for the 3-year limitation is that it operates on transportation occurring subsequent to the act.

III. The 3-years' limitation means nothing at all so far as railroad transportation for the Government is concerned.

IV. The act of June 7, 1924, does no more than negative

the idea that might otherwise be asserted, that it was intended to replace with a new date the date provided in the Transportation Act from which the new limitation was to take effect.

V. Even if the 3-years' limitation does apply to railroad transportation for the Government, it does not bar this claim based upon money withheld.

(a) The said 3-years' limitation can apply to railroad transportation claims against the Government only as a repeal by implication and in unusual terms of the existing 6-years' limitation, and therefore should not be so construed.

It is said in Government's brief, p. 10, that: "Opposing counsel would read the language as follows: 'All actions at law by carriers subject to this act for recovery of their charges or any part thereof, *except actions against the United States*, shall be begun within three years from the time the cause of action accrues and not after.' "

Since we contend that, for a variety of reasons, the said provision does not apply at all to railroad claims against the Government, we can afford to admit that our position is correctly stated; but appellee's counsel have hardly deemed it necessary to interpolate into the act a clause to expressly exclude something which was not included in it. Government counsel, on the other hand, would, and in fact do, read the provision as follows: "All *suits* by carriers subject to this act for recovery of their charges or any part thereof, including suits against the United States doing business with them on terms of unlimited credit, expressly allowed by law, shall be begun within three years from the time the service was rendered and not after, the provisions of Section 156 of the Judicial Code to the contrary notwithstanding."

It must be admitted, we think, that if the provision in the Transportation Act applies to carrier's claims against the Government it must be because, by implication and in unusual terms, it repeals to an extent Section 156 of the

Judicial Code. It is elementary that repeals by implication are not favored and will not be sustained except upon the clearest showing that the statute in question was so intended. Not only is there nothing to induce the conviction that this statute was intended to repeal the existing limitation, but there is every reason against it. We have mentioned the unusual terms employed, by which we mean the use of the words "action at law." It may be that a suit in the Court of Claims *can* be termed an "action at law," but no man, living or dead, ever saw or heard it referred to as such, either legislatively, judicially or in common parlance. Such a proceeding is unifomly known as a suit.

Disregarding the unusual term, Government counsel seek to justify the applicability of the 3-years limitation upon that sentence containing it alone. Little consideration is given the necessarily related provisions of the act and of the act of June 7, 1924, found in immediate juxtaposition to the paragraphs relied upon and intimately related to them, and at other places in the Transportation Act itself. Both acts fairly bristle with evidence that Congress did not have in mind any idea of interrupting the existing orderly course of dealing between carriers and the Government and imposing upon both of them the burden of this 3-year limitation of actions. In both acts—somewhat more expansively in the later one—the provision originating and continuing the nation-wide 3-years limitation is followed immediately by provisions prescribing the course of action to be followed in different events and under certain specified conditions—not one of which has any possible relation to the methods authorized and prevailing between carriers and the Government in the handling of their business relations.

But this is not all. Section 405 of the Transportation Act contained that provision which we have already quoted in our statement of the case, concluding with that proviso:

> "That the provisions of this paragraph shall not be construed as prohibiting any carrier from extending

> credit * * * on freight transported for the United States."

There is not the faintest suggestion that carriers should take care that they received settlement within three years. On the contrary, no limitation whatever is placed upon the term of credit and presumably the obligations incurred were to be discharged or enforced by the usual and existing methods. Must Congress be understood, after leaving the matter in this situation, to have intended to "slip up" on carriers and by the employment of unusual terms, repeal by implication their existing remedy against an abuse of that credit?

The burden of showing the repeal is on the Government. It attempts to sustain that burden by no more than the repetition of a single sentence containing terms of doubtful meaning.

(b) The application of the 3-years' limitation to carriers granting credit to the Government by long continued practice and by express provision of law, would discriminate against them as compared with others sustaining contractual relations with the Government, and it could not have been so intended.

Section 145 of the Judicial Code, defining the jurisdiction of the Court of Claims, provides that it shall have jurisdiction to determine—

> "*First.* All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the Government of the United States * * *"

while by Section 156 of the Judicial Code, it is provided:

> "Every claim against the United States cognizable by the Court of Claims, shall be forever barred unless a petition setting forth a statement thereof is filed in the court * * * within six years after the claim first accrues. * * *"

This last section, while technically more of a jurisdictional statute, has always operated and has become known as a statute of limitations, and in the Government's brief (p. 1) it is referred to as "the general statute of limitations."

There can be no doubt that this suit, whether based upon an unpaid part of a transportation claim, or upon the promise implied by the Constitution and the law of the land to make plaintiff whole if the withholding of its money in the course of payment of the later bill be erroneous, is a suit based upon a contract.

Thus, Congress has provided that anybody aggrieved at the outcome of his contractual relations with the Government might have six years within which to assert that grievance by suit. For the settlement of railroad claims for transportation without suit it had provided somewhat elaborate machinery, and it had expressly recognized, ratified and authorized the practice of their granting credit to the Government.

If said three-year limitation be held to apply to carriers' claims against the Government, they will be the *only* contractors excepted from the "general statute of limitations," which would be the rankest discrimination against them. In view of the fact that they were allowed by law to grant credit to the Government, of the further fact that the machinery established by law to discharge the Government's obligation sometimes takes more than three years to operate, and, further, of the extremely inapt language employed to constitute a repeal by necessary implication, we cannot believe that Congress had any intention of inflicting such discrimination.

(c) Railroad transportation claims against the Government are taken out of the 3-years limitation by the valid contracts under which the liability is created.

In our statement of the cast, ante, we have quoted from the contracts under which transportation for the Government is obtained and furnished, as set forth in the bills of lading and transportation requests, and will not repeat them here.

The validity of these contracts cannot be questioned. They are, in fact, so far as their credit feature is concerned, expressly ratified by Sec. 405 of the Transportation Act itself. There is nothing in them from which the implication can be raised that carriers recognized they were bound to assert their rights by judicial proceedings (else lose them), within any specified time, or according to changing laws. On the other hand, however, the judicial enforcement of the contracts was necessarily subject to the law in effect at the time the contract was made, and that was at any time "within six years after the claim first accrues." By reason of the credit feature this contract certainly was not at that time designated by the Transportation Act for the 3-years limitation to operate upon. And, transportation for the Government being the subject of express contracts, the remedies upon them continue the same throughout in the absence of any legislation which can reasonably be construed as aimed directly at them.

II. The most that can be claimed for the 3-year limitation is that it operates on transportation occurring subsequent to the act.

The Transportation Act provides when a cause of action "*shall be* deemed to accrue." It thus necessarily contemplated future causes of action. For this reason and for the reason that the Transportation Act was the first attempt to fix *by statute* when a cause of action should accrue, it certainly cannot be claimed with reason that it applied to anything but causes of action thereafter arising. This is so plain that it argues itself and leaves nothing more to be said on the subject. The authorities construing statutes of different verbiage have no application.

III. The 3-years limitation means nothing at all so far as railroad transportation for the Government is concerned.

The St. Louis, San Francisco & Texas case (No. 91) is a freight transportation case, while this case (No. 92) is a passenger transportation case. It would naturally be assumed that the statute of limitations (whatever it might be) applying to one would apply also to the other.

By Section 405 of the Transportation Act, credit is expressly allowed to be extended for freight transportation for the United States. In view of the fact that no limitation of time for this credit is suggested, it must be unlimited in that respect. In view of this and of the fact that it sometimes takes more than three years for the Governmental machinery to operate, it is not seen how claims against the Government based on freight transportation can be subjected to a 3-year limitation. Wherefore, it would seem that the "general statute of limitations"—to quote from page 1 of Government's brief—"allowing six years" would apply. And, it would seem that unless for some good reason passenger transportation is subject to a different limitation, the 6-year limitation applies to it also.

On the other hand, unless a 3-year limitation be fixed by the Transportation Act for Government passenger transportation, it would naturally remain subject to the same limitation to which it had always been subject—six years; and, unless for some good reason a different rule were provided for freight transportation the latter would be subject to the same limitation.

But we cannot find that passenger transportation, which is always (except for the Government) "cash across the counter" business, is the subject of any concern in the Transportation Act. One *sentence* standing alone—that fixing a 3-year limitation of actions only—might indicate otherwise. But Congress could hardly have intended to provide a limitation for the enforcement of what does not exist, and taking the amendments to the Interstate Commerce Act as a whole, it was freight transportation around which all safeguards were thrown and with which Congress for obvious reasons was concerning itself.

Thus, it comes down to this: (1) That for freight transportation the six-years statute was left in force—and the same statute should apply to passenger transportation unless some other were specially provided for it; (2) that for passenger transportation, the six-years statute was left in force—and the same statute should apply to freight

transportation unless some other were specially provided for it.

Since neither alternative is true, it naturally follows that so far as Government transportation is concerned, the 3-years limitation in the Transportation Act (and in the Act of June 7, 1924) does not mean a thing.

IV. The act of June 7, 1924, does no more than negative the idea that might be otherwise asserted, that it was intended to replace with a new date the date provided in the Transportation Act from which the new limitation was to take effect.

We think the act of June 7, 1924, so far as the fixation of a period of limitations for actions at law is concerned, was no more than a re-enactment of the similar provision in the Transportation Act, and being more than three years subsequent to the latter act, paragraph (h) in the latter act simply repelled any idea that might otherwise exist that it was the intention to substitute the date of its approval for the date provided in the Transportation Act, from which the 3-years limitation was to begin to operate.

Of course, the act of June 7, 1924, had also the purpose of giving claimants against railroads three years in which to assert their claims, but so far as the limitation imposed upon carriers was concerned, it was the evident purpose only to provide beyond question that it was to be left as it was before and no more.

V. Even if the 3-years limitation does apply to railroad transportation for the Government, it does not bar this claim based upon money withheld.

This was a point strenuously argued on both sides in the lower court and sustained by that court (Opinion, R. 10). There it was argued that the withholding of the plaintiff's money out of the amount due on the later undisputed bill was a "tort." If that is so, all deductions are "torts."

The point is not noticed at all in the Government's brief We consider it conclusive of the case, regardless of the application of the 3-years limitations.

The facts, briefly, are that plaintiff rendered its bill

S-394 upon the basis claimed to be correct and was paid its bill in full by a disbursing officer. Later, the accounting officers erroneously held that plaintiff had been overpaid on bill S-394 the sum of $7,663.56, and upon plaintiff's refusal to remit the amount thereof *it was otherwise collected from plaintiff*, the machinery employed being to take it out of another sum admittedly due plaintiff. That other sum happened to be due for transportation. What it was due for is of no consequence. It had passed beyond the stage of a mere transportation claim to an account stated, and agreed upon. What the Government said, in effect, to plaintiff was that it was paying the later account in full, partly in cash and partly by the cancellation of an obligation of plaintiff's. There was no dispute about, or refusal to pay, plaintiff's later claim. The Government simply held out that it was paying the later claim in full in the way described. It is estopped to deny what it had asserted. Without the course followed by the Government plaintiff would have had no complaint. If the money appropriated by the Government was not lawfully due from the plaintiff to the Government (and it was not), the law of the land implied a promise to pay it. Plaintiff could sue either for an alleged unpaid balance of the second bill or for the "deduction" as for money had and received to the use of plaintiff, or both, which it has done, and suit can be defended only by justifying the appropriation of plaintiff's money out of the fund due it. In a suit for the money erroneously appropriated, without which plaintiff would not have had any claim at all, plaintiff has six years from the appropriation in March, 1918, to file that suit. The Government cannot deny the position it took nor the implied promise growing out of its action.

THE GOVERNMENT'S BRIEF

The Government has filed in this case a brief that upon first impression is right persuasive. Counsel for appellee has been prevented by a disabling illness from giving it the extensive analysis and criticism of which it seems suscepti-

ble. It may be briefly said, however, that the brief seems somewhat aside the point. The burden, we think, is upon the Government to show that as a *necessary* implication from the language employed in the Transportation Act "the general statute of limitations" was repealed. This has been assumed, but not demonstrated. We concede that the Congress does often provide special statutes of limitations for special classes of claims against the Government; but it does so in legislating directly upon the subject and lays down a rule applicable to all in the same situation. We concede also that statutes of limitations are often amended by law so as to establish a rule or effect a change from the previous situation; but these statutes are all clear in their purpose and operate alike upon all in the same situation. But here the Government would have the Transportation Act, in its inapt language, operate as a discrimination against one class, and one class alone, of those sustaining contractual relations with the Government and protected by Section 156 of the Judicial Code. The decisions cited by the Government, therefore, have no true bearing on this case.

CONCLUSION

It is respectfully submitted that the Government has not sustained the burden resting upon it as appellant; that the three-year limitation in the Transportation Act does not apply to railroad transportation claims against the United States doing business with them on lawfully authorized credit, and finally, for these reasons and for the reason that this suit grows out of a deduction which was improper, the judgment of the lower court in this case should be affirmed.

Respectfully submitted,

F. Carter Pope,
Attorney for Appellee.

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SUPREME COURT OF THE UNITED STATES.

Nos. 91 and 92.—October Term, 1925.

91	United States, Appellant, *vs.* St. Louis, San Francisco & Texas Railway Co.	Appeals from the Court of Claims.
92	United States, Appellant, *vs.* Wabash Railway Co.	

[January 18, 1926.]

Mr. Justice Brandeis delivered the opinion of the Court.

These cases, which were argued together, present on similar facts the same question of law. In each the railroad had, prior to federal control, rendered to the War Department transportation service, payment for which was disallowed by the Auditor. Each company commenced suit therefor in the Court of Claims more than three years but within six years from the time when the cause of action accrued, and after the lapse of three years from the enactment of Transportation Act, 1920, February 28, 1920, c. 91, 41 Stat. 456. That Act amending paragraph 3 of § 16 of the Interstate Commerce Act provides:

"All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues and not after."

The Government defended these suits solely on the ground that the right to sue had been lost by lapse of time. It contended that the three-year limitation applies to claims against the Government prosecuted in the Court of Claims, as well as to actions brought against other shippers in other courts; that it applies to claims which arose prior to the passage of the 1920 Act; that the three-year period began at the date when the cause of action accrued, provided there remained, at the passage of the Act, a reasonable time before the expiration of the three years within which suit could have been brought; and that, in any event, suit on such

claims is barred where, as in the cases at bar, the suit is commenced more than three years after the passage of the 1920 Act. In each of these cases judgment was entered for the plaintiff. *Wabash Ry. Co.* v. *United States,* 59 Ct. Cl. 322; see also *Schaff, Receiver* v. *United States,* 59 Ct. Cl. 318. An appeal to this Court, under §§ 242 and 243 of the Judicial Code, was taken in each case before June 7, 1924.

That a statute shall not be given retroactive effect unless such construction is required by explicit language or by necessary implication is a rule of general application. It has been applied by this Court to statutes governing procedure, *United States Fidelity and Guaranty Co.* v. *United States,* 209 U. S. 306; and specifically to the limitation of actions under another section of Transportation Act, 1920. *Fullerton-Krueger Lumber Co.* v. *Northern Pacific Ry. Co.,* 266 U. S. 435. There is nothing in the language of paragraph 3 of § 16, or in any other provision of the Act, or in its history, which requires us to hold that the three-year limitation applies, under any circumstances, to causes of action existing at the date of the Act.

The Government contends that, even if the suits were not barred by Transportation Act, 1920, they were barred by the Act of June 7, 1924, c. 235, 43 Stat. 633, which amended paragraph 3, among other things, by making the following addition thereto:

"(h) The provisions of this paragraph (3) shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue. . . ."

The Senate and House Reports accompanying the bill (S. 2704) state that the purpose of the amendment was to revive claims barred under the existing law as interpreted in *Kansas City Ry. Co.* v. *Wolf,* 261 U. S. 133. It is not to be assumed that Congress intended by that amendment to defeat claims on which suits duly brought were then pending, or on which, as in the cases at bar, judgment had already been entered below. Compare *Herrick* v. *Boquillas Land & Cattle Co.,* 200 U. S. 96.

As we hold that paragraph 3 does not apply to any cause of action existing at the date of the passage of Transportation Act, 1920, we have no occasion to consider whether, under any circumstances, it is applicable to claims against the Government brought in the Court of Claims pursuant to § 145, Judicial Code. See *Western Pacific R. R. Co.* v. *United States,* 59 Ct. Cl. 67, 81.

Affirmed.